

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

624

In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 22,904

FILED JUN 23 1969

Nathan J. Paulson
CLERK

D. C. TRANSIT SYSTEM, INC., a corporation
Petitioner

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Respondent

and

PUBLIC SERVICE COORDINATED TRANSPORT,
Respondent-Intervenor

and

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,
Respondent-Intervenor

Nathan J. Paulson
CLERK

PETITIONER'S APPENDIX

FILED JUN 23 1969

United States Court of Appeals
for the District of Columbia Circuit

Manuel J. Davis
Paul M. Cowgill, Jr.
1420 New York Avenue, N. W.
Washington, D. C. 20005

Attorneys for D. C. Transit
System, Inc.

Dated: June 20, 1969



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APPENDIX 'A'

Excerpts from Legislative
History of the Compact
Bearing on WMATC's Exclu-
sive Jurisdiction in the
Metropolitan District

Pages 2-3 of Senate Report No. 1906 of the 86th Congress,
2nd Session, dated August 23, 1960:

The compact accomplishes a very simple and basic objective, but a most important one. In effect, the compact centralizes to a great degree in a single agency, the [WMATC], the regulatory powers of private transit now shared by four regulatory agencies. It will make possible the regulation of such transit within the metropolitan area without regard to the boundaries of political jurisdiction...In its capacity as the National Legislature, Congress grants its consent to the compact pursuant to the requirement of the Federal Constitution; removes Federal jurisdiction over the subject matter of the compact...

Pages 3, 5, 7, 9, 19, 21 and 29 of House Report No. 1621 of the 86th Congress, 2nd Session, dated May 18, 1960:

The purposes of the resolution [H.J. Res. 402] are...(3) to suspend Federal jurisdiction relating to or affecting transportation under the compact and to the persons engaged therein...

As the first step, the plan [transportation plan dated July 1, 1959, of the National Capital Planning Commission and the National Capital Regional Planning Council] recommends that immediate action be taken to improve the present public transit service by centralizing regulation of existing privately owned transit on a regional basis to overcome the barriers imposed by jurisdictional boundary lines. This is the function of the instant compact... The

centralization of regulatory authority in a single agency, which would be substantially achieved under the subject legislation, is an essential step in bringing about a more satisfactory transit service...

In article VIII the compact recognizes that affirmative legislation by the Congress [is required] to remove Federal jurisdiction from the sphere of compact action...The compact, therefore, provides that it shall become effective 90 days after its adoption by the signatories and consent thereto by the Congress and the enactment by the Congress of legislation to remove the Federal jurisdiction from the area of compact activity...

Section 3 of House Joint Resolution 402 provides for removal of Federal jurisdiction relating to or affecting transportation under the compact and to the persons engaged therein. The removal of Federal jurisdiction is by suspension of applicable laws and regulations...

The Interstate Commerce Commission is the Federal agency most affected by the compact. The jurisdiction of the [WMATC] over the interstate aspects of transit in the metropolitan district would be carved out of the present jurisdiction of the Interstate Commerce Commission...

There follows in parallel columns a listing of the Federal laws which are suspended in whole or in part to the extent that such laws are inconsistent with or in duplication of the provisions of the compact and of the resolution [H.J. Res. 402]: 49 U.S. Code (1958 ed.) Chapter 8, Interstate Commerce Act - Motor Carriers.

APPENDIX 'B'

Before The
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In the Matter of:

D. C. Transit System, Inc.,
a corporation

vs.

Public Service Coordinated
Transport, a corporation.

Formal Complaint No.

Docket No.

COMPLAINT OF D. C. TRANSIT
SYSTEM, INC.

Comes now D. C. Transit System, Inc. ("DCT"), a District of Columbia corporation with offices at 3600 M Street, N.W., Washington, D. C. 20007, by and through its attorneys, and, pursuant to Section 13(a) of Article XII of Title 11 of the Washington Metropolitan Area Transit Regulation Compact ("Compact"), P.L. 86 - 794, Act of September 15, 1960, 74 Stat. 1031, and Rules 9 and 10 of the Commission's Rules of Practice and Procedure, files this complaint against Public Service Coordinated Transport ("PSC"), a corporation with offices at 180 Boyden Avenue, Maplewood, New Jersey 07040, stating as grounds therefor the following:

1. DCT is a duly certificated common carrier of passengers for hire in the Washington Metropolitan Area, holding Certificate of Public Convenience and Necessity No. 5 issued by this Commission.

2. DCT, pursuant to Certificate No. 5, is performing irregular route charter and special operations, round-trip or one-way, between points in the District of Columbia.

3. DCT and other carriers certificated by the Commission are being deprived of substantial revenues by the unauthorized operations of PSC described below.

4. PSC is performing passenger transportation for hire between points in the District of Columbia. Such transportation, subject to the Commission's jurisdiction under Section 1(a) of Article XII of Title 11 of the Compact, is being performed without a certificate of public convenience and necessity as required by Section 4, subsections (a) and (b), of said Article.

5. Specifically, the records of the Public Service Commission of the District of Columbia indicate that the following buses owned by PSC have been licensed to operate in the District between August 31, 1966, the date of issuance, and March 31, 1967:

Public Service
Commission
License Number

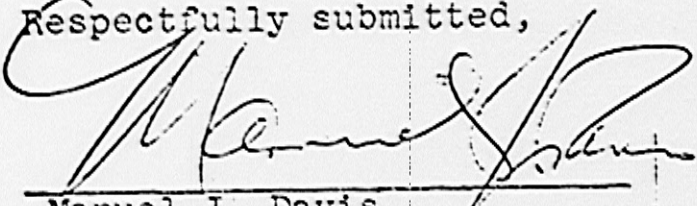
Public Service
Coordinated
Bus Number

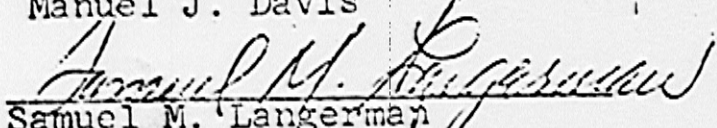
141	U 731
142	T 715
143	T 732
144	U 742
145	R 755
146	T 701
147	U 743
148	R 700
149	X 740
150	R 772

Upon information and belief, PSC is operating the above numbered buses in the District in the performance of for-hire passenger services.

WHEREFORE, D.C.T. respectfully prays that the Commission, pursuant to Section 13(c) of the Compact, issue an appropriate order to compel PSC to cease and desist from its unauthorized operations and comply with the certification provisions of Section 4 of the Compact.

Respectfully submitted,


Manuel J. Davis


Samuel M. Langerman
Attorneys for D. C. Transit
Systems, Inc.
3600 M Street, N.W.
Washington, D. C.
FE 3-5200

CERTIFICATE OF SERVICE

Two copies of the foregoing Complaint have been delivered to the Marshal's Office, United States District Court, this 2nd day of March, 1967, to be served upon the D. C. Superintendent of Corporations, Mr. Alfred Goldstein, 6th and D. Streets, N. W., Washington, D. C. 20001 in accordance with Title 29, Section 933(c) of the District of Columbia Code, 1961 Edition, as amended.


Manuel J. Davis

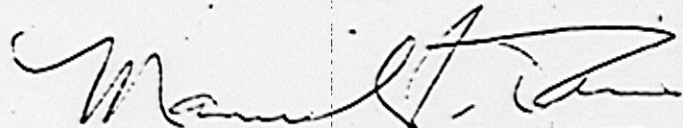
Affidavit of Manuel J. Davis
 In Accordance with Title 29,
 Section 9331(c) of the District
 of Columbia Code, 1961 Edition,
As Amended

To the best of my knowledge the latest known
 post office address of Public Service Coordinated Transport,
 a foreign corporation transacting business in the District
 without a certificate of authority, is as follows:

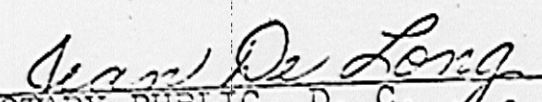
180 Boyden Avenue
 Maplewood, New Jersey 07040.

DISTRICT OF COLUMBIA, SS:

Manuel J. Davis, Special Counsel, D. C. Transit
 System, Inc., deposes and says that he has read the foregoing
 statement, knows the contents thereof, and that the same are
 true as stated.


 Manuel J. Davis

Subscribed and sworn to before me this 2nd day
 of March, 1967.


 NOTARY PUBLIC, D. C.
 My Commission Expires Aug. 14, 1968

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APPENDIX 'C'

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In the Matter of:)	FORMAL COMPLAINT NO. 17
)	
D. C. TRANSIT SYSTEM, INC.,)	ANSWER OF PUBLIC SERVICE
A CORPORATION)	COORDINATED TRANSPORT
)	
vs.)	
)	
PUBLIC SERVICE COORDINATED)	DOCKET NO.
TRANSPORT, A CORPORATION)	

Comes now Public Service Coordinated Transport (hereinafter called Public Service), a corporation of the State of New Jersey, having its principal office at 180 Boyden Avenue, Maplewood, New Jersey, 07040, engaged in business as a common carrier of passengers for hire in interstate commerce, under the jurisdiction of the Interstate Commerce Commission, in answer to the Complaint filed by D. C. Transit System, Inc., says:

1. It has no knowledge or information sufficient to form a belief as to the statements contained in paragraph 1.

2. It has no knowledge or information sufficient to form a belief as to the statements contained in paragraph 2.

3. It denies paragraph 3.

4. It denies that it is performing or has performed transportation for hire, between points in the District of Columbia, as defined by the Regulatory Provisions of the Washington Metropolitan Area Transit Regulation Compact, because the only service provided by Public Service is the transportation of passengers from points outside the area covered by the Compact to one or more points within the area covered by the Compact and return, as one continuing transportation movement.

5. It admits that the autobuses listed in paragraph 5 were licensed by the Public Service Commission of the District of Columbia for the period between August 31, 1966, and March 31, 1967. However, it denies that it has operated these buses in the performance of for-hire passenger service in the District of Columbia, as defined by the Regulatory Provisions of the Washington Metropolitan Area Transit Commission Compact.

AFFIRMATIVE DEFENSES

Public Service, by way of affirmative defenses, to the Complaint filed by D. C. Transit System, Inc., says that:

1. The Washington Metropolitan Area Transit Commission does not have any jurisdiction to grant the relief sought in the instant Complaint.

2. The Complaint fails to set forth a cause of action upon which any relief can be granted by the Washington Metropolitan Area Transit Commission.

WHEREFORE, Public Service respectfully prays that the Complaint should be dismissed.

Respectfully submitted,

RICHARD FRYLING,
Attorney for Public Service
Coordinated Transport

By:

(sgd.) Thomas J. McCluskey

THOMAS J. McCLUSKEY

Dated: April 20, 1967.

Due Date: April 21, 1967.

STATE OF NEW JERSEY)
 : ss.
 COUNTY OF ESSEX)

THOMAS J. McCLUSKEY, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am General Solicitor of Public Service Coordinated Transport, against whom the Complaint in this matter has been filed.

2. I have read the annexed Answer and the matters and things contained therein are true to the best of my knowledge and belief.

/s/ THOMAS J. McCLUSKEY
 THOMAS J. McCLUSKEY

Sworn to and subscribed
 before me this 20th day
 of April, 1967.

/s/ EDNA HINGEL
 EDNA HINGEL
 NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires April 19, 1970

(SEAL)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Answer of Public Service Coordinated Transport, upon Manuel J. Davis, Esq., and Samuel M. Langerman, Esq., Attorneys for D. C. Transit System, Inc., 3600 M Street, N.W., Washington, D.C., by mailing a copy thereof by first-class mail, postage prepaid.

Dated at Maplewood, New Jersey, this 20th day of April, 1967.

RICHARD FRYLING,
Attorney for Public Service
Coordinated Transport

By:

(sgd.) Thomas J. McCluskey

THOMAS J. MCCLUSKEY

APPENDIX D

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In the Matter of :

D. C. TRANSIT SYSTEM, INC., :
a corporation, :Formal Complaint
No. 17

v. :

Docket No. :

PUBLIC SERVICE COORDINATED TRANSPORT, :
a corporation. :PETITION TO INTERVENE

Comes now the National Association of Motor Bus Owners (NAMBO), and respectfully petitions to intervene in the above-captioned proceedings, showing the following;

1. The National Association of Motor Bus Owners is a non-profit corporation, organized and existing under the laws of the District of Columbia with its principal office at 839 17th Street, N. W., Washington, D. C. It represents approximately 1,000 motor bus carriers which collectively conduct operations throughout the United States. Its members are actively engaged in the transportation of passengers under the jurisdiction and regulation of the Interstate Commerce Commission and, in some instances, The Washington Metropolitan Area Transit Commission.

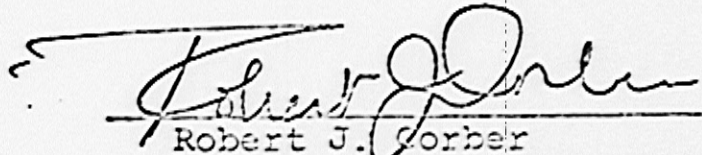
2. As an authorized representative of common carriers subject to the jurisdiction of this Commission as well as that of the Interstate Commerce Commission, NAMBO has a distinct and unique interest in these proceedings. The complaint would appear to require issuance of certificates by this Commission for sightseeing operations conducted by regular route motor carriers subject to the jurisdiction of the Interstate Commerce Commission in regard to special or charter operations. Such requirement would adversely affect a large segment of the intercity motor bus industry. The importance of the case therefore requires participation by NAMBO in the interest of protecting special and charter operations in the District of Columbia by interstate regular route carriers.

3. NAMBO seeks to intervene in opposition to complainant insofar as it would require intercity motor carriers of passengers engaging in special or charter operations in the District of Columbia pursuant to authority granted by the Interstate Commerce Commission, to obtain a certificate from this Commission for such operations. Participation will be limited to this jurisdictional question.

WHEREFORE, the National Association of Motor Bus Owners prays this Commission to enter an order permitting

it to intervene in the above-captioned cause.

Respectfully submitted,



Robert J. Corber
Attorney for the National
Association of Motor Bus
Owners

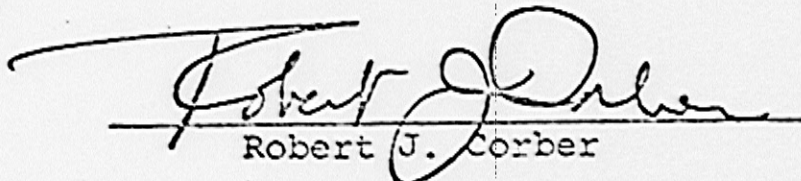
1250 Connecticut Avenue, N.W.
Washington, D. C. 20036
Telephone: 223-4200

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused
the foregoing to be served upon the parties hereto by
mailing a copy thereof, postage prepaid and properly
addressed, to each of the following:

Samuel M. Langerman, Esquire
3600 M Street, N. W.
Washington, D. C.
Attorney for D. C. Transit System, Inc.

Thomas J. McCluskey, Esquire
180 Boyden Avenue
Maplewood, New Jersey 07040
Attorney for Public Service Coordinated
Transport



Robert J. Corber

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APPENDIX 'E'

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D. C.

ORDER NO. 709

IN THE MATTER OF:

Served May 18, 1967

D. C. Transit System, Inc.,)

Formal Complaint No. 17

v.)

Public Service Coordinated)
Transport)

The National Association of Motor Bus Owners (NAMBO) has filed a Petition to Intervene in this proceeding. Good cause having been shown and it appearing that Petitioner has a substantial interest herein, the Commission is of the opinion that the Petition should be granted and that NAMBO be made a party to this proceeding.

THEREFORE, IT IS ORDERED that the Petition of the National Association of Motor Bus Owners to Intervene in this proceeding be, and it is hereby, granted.

FOR THE COMMISSION:

Melvin E. Lewis

MELVIN E. LEWIS
Executive Director

APPENDIX 'F'

Before The
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In the Matter of:

D. C. TRANSIT SYSTEM, INC.)

Complainant)

vs.)

Formal Complaint No. 17

PUBLIC SERVICE COORDINATED)

TRANSPORT)

Respondent)

STIPULATION OF FACTS

For the purpose of resolving the jurisdictional question involved in the above-entitled proceedings, D. C. Transit System, Inc., hereinafter referred to as Complainant, and Public Service Coordinated Transport, hereinafter referred to as Respondent, hereby agree and stipulate as follows:

1. Respondent is a common carrier of passengers for hire subject to the jurisdiction of the Interstate Commerce Commission by virtue of Certificates of Public Convenience and Necessity issued to it in Docket No. MC-3647 and various sub numbers thereunder. Pursuant to that auth-

ority, Respondent provides service over regular routes between points in New Jersey, and points in New York, Pennsylvania, or Delaware.

2. Pursuant to Section 208(c) of the Interstate Commerce Act, Respondent has authority to provide incidental interstate charter operations from points along its regular routes and from the areas served by its regular routes to points in other states and the District of Columbia, and return. It also holds Certificates of Public Convenience and Necessity from the Interstate Commerce Commission in Docket No. MC-3647 and various sub numbers thereunder, pursuant to which it can provide service in special operations from points in the States of New Jersey and Pennsylvania, to many points in the United States, including the District of Columbia, and return.

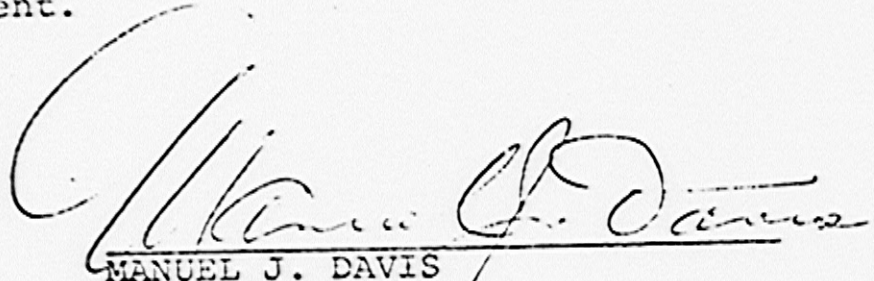
3. Pursuant to those authorities, the Respondent provided service on a tour for a chartering party which originated at Linden, New Jersey, and traveled to Washington, D. C. and return, commencing on October 14, 1966 at Linden, New Jersey, and ending at Linden, New Jersey on October 16, 1966. The tour patrons had overnight hotel accommodations in Washington, D. C. During the course of

that tour, the Respondent's bus transported the tour patrons over the streets and highways of the District of Columbia and Arlington and Mount Vernon, Virginia, where the tour patrons were taken to visit numerous points of historical interest in those areas. All of those passengers on that tour departed from and returned to the same bus at each such point of interest. All of those passengers on that tour commenced and ended their trips at Linden, New Jersey.

4. The Respondent's bus, which provided the service for the above tour, was licensed by the Public Service Commission of the District of Columbia to comply with the rules and regulations of that Commission.

5. The Respondent, by entering into this stipulation, does not in any way submit itself to the jurisdiction of the Washington Metropolitan Area Transit Commission, but expressly hereby reserves unto itself, the right to contest that jurisdiction and to institute proceedings at any time during the pendency of the instant matter, before any regulatory agency or in any court of competent jurisdiction to obtain a judicial determination of the Washington Metropolitan Area Transit Commission's

jurisdiction over the Respondent or any service being performed by the Respondent.



MANUEL J. DAVIS
Attorney for D. C.
Transit System, Inc.

RICHARD FRYLING
Attorney for Public Service
Coordinated Transport

BY: _____
THOMAS J. McCLUSKEY

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In the Matter of:

D. C. TRANSIT SYSTEM, INC.)

Complainant)

Formal Complaint No. 17

vs.)

PUBLIC SERVICE COORDINATED)
TRANSPORT)

STIPULATION
OF
FACTS

Respondent)

For the purpose of resolving the jurisdictional question involved in the above-entitled proceedings, D. C. Transit System, Inc., hereinafter referred to as Complainant, and Public Service Coordinated Transport, hereinafter referred to as Respondent, hereby agree and stipulate as follows:

1. Respondent is a common carrier of passengers for hire subject to the jurisdiction of the Interstate Commerce Commission by virtue of Certificates of Public Convenience and Necessity issued to it in Docket No. MC-3647 and various sub numbers thereunder. Pursuant to that authority, Respondent provides service over regular routes between points in New Jersey, and points in New York, Pennsylvania, or Delaware.

2. Pursuant to Section 208(c) of the Interstate Commerce Act, Respondent has authority to provide incidental interstate charter operations from points along its regular routes and from the areas served by its regular routes to points in other states and the District of Columbia, and return. It also holds Certificates of Public Convenience and Necessity from the Interstate Commerce Commission in Docket No. MC-3647 and various sub numbers thereunder, pursuant to which it can provide service in special operations from points in the States of New Jersey and Pennsylvania, to many points in the United States, including the District of Columbia, and return.

3. Pursuant to those authorities, the Respondent provided service on a tour for a chartering party which originated at Linden, New Jersey, and traveled to Washington, D.C. and return, commencing on October 14, 1966 at Linden, New Jersey, and ending at Linden, New Jersey on October 16, 1966. The tour patrons had overnight hotel accommodations in Washington, D.C. During the course of that tour, the Respondent's bus transported the tour patrons over the streets and highways of the District of Columbia and Arlington and Mount Vernon, Virginia, to visit points of historical interest in those areas. All of those passengers on that tour

commenced and ended their trips at Linden, New Jersey.

4. The Respondent's bus, which provided the service for the above tour, was licensed by the Public Service Commission of the District of Columbia to comply with the rules and regulations of that Commission.

5. The Respondent, by entering into this stipulation, does not in any way submit itself to the jurisdiction of the Washington Metropolitan Area Transit Commission, but expressly hereby reserves unto itself, the right to contest that jurisdiction and to institute proceedings at any time during the pendency of the instant matter, before any regulatory agency or in any court of competent jurisdiction to obtain a judicial determination of the Washington Metropolitan Area Transit Commission's jurisdiction over the Respondent or any service being performed by the Respondent.

MANUEL J. DAVIS,
Attorney for D. C. Transit
System, Inc.

RICHARD FRYLING,
Attorney for Public Service
Coordinated Transport

By:

THOMAS J. McCLUSKEY

APPENDIX 'C'Before The
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In The Matter Of:

D. C. TRANSIT SYSTEM, INC.)	
)	
Complainant)	
)	
vs.)	Formal Complaint No. 17
)	
PUBLIC SERVICE COORDINATED)	
TRANSPORT)	
)	
Respondent)	

BRIEF FOR COMPLAINANT

Manuel J. Davis
Samuel M. Langerman
3600 M Street, N. W.
Washington, D. C. 20007

Attorneys for D. C.
Transit System, Inc.

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Washington Metropolitan Area Transit Com'n., et al. v. Universal Inter- pretive Shuttle Corporation, F2d (Cases Nos. 20,975 - 20,978, D.C. Cir. 1967)	4, 9

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Second Supplemental Appropriation Act, 1955, Act of April 22, 1955, (H.R. 4903), 69 Stat. 28	6
Washington Metropolitan Area Transit Regulation Compact, as approved by Act of September 15, 1960, (H.J. Res. 402) 74 Stat. 1031	
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House Report No. 1621, 86th Congress, 2d Session, accompanying H. J. Res. 402 (May 18, 1960)	8, 13, 19

Senate Report No. 1906, 86th Congress,
2d Session, Accompanying H.J. Res. 402
(August 23, 1960)

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STATEMENT OF THE CASE

D. C. Transit System, Inc. ("DCT") filed its complaint against Public Service Coordinated Transport ("PSC") on March 2, 1967. PSC replied to such complaint on April 20, 1967. The National Association of Motor Bus Owners was permitted to intervene on May 18, 1967.

On August 4, 1967 the parties filed a Stipulation of Facts which is reproduced as Appendix "A" hereto. The parties also agreed to the following brief dates:

DCT's Brief - September 3, 1967

PSC's Brief - October 2, 1967

DCT's Reply Brief - October 16, 1967

ARGUMENT

The sightseeing operations of PSC in the District of Columbia and Arlington and Mount Vernon, Virginia constitute "transportation under the Compact" and are therefore subject to the jurisdiction of the WMATC.

With the passage of the Washington Metropolitan Area Transit Regulation Compact ("Compact"), Act of September 15, 1960, 74 Stat. 1031, the Congress established a new scheme of regulating for-hire motor carrier passenger service performed in the Washington Metropolitan Area Transit District ("Metropolitan District").^{1/} A single agency, the Washington Metropolitan Area Transit Commission ("WMATC"), was created as a replacement for the four commissions which were exercising jurisdiction thereover in piece-meal fashion.^{2/}

^{1/} As described in Article I of the Compact, the Metropolitan District comprises in general the District of Columbia, Montgomery and Prince Georges counties in Maryland, and Arlington and Fairfax counties in Virginia.

^{2/} The Interstate Commerce Commission regulated interstate commerce while the Public Utilities Commission of the District of Columbia, Public Service Commission of Maryland, and State Corporation Commission of Virginia regulated local commerce.

The WMATC was given what is tantamount to plenary regulatory authority. Article II of the Compact describes such authority in the following terms:

The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis without regard to political boundaries within the Metropolitan District, as set forth herein.

All Federal laws inconsistent with or in duplication of WMATC's exclusive authority were suspended as provided in Section 3 of the legislation approving the Compact, 74 Stat. 1050, and implementing Article VIII.^{3/}

The United States Court of Appeals for the District of Columbia, in D. C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission, et al., Case No. 20,188, decided March 7, 1967, petition for rehearing en banc denied April 13, 1967, has described WMATC's exclusive authority as follows (page 3):

When Congress consented to the Compact in 1960, it elected to treat the metropolitan area of Washington as a geographical unit, with the Commission as the central

^{3/} The exclusive jurisdiction which the Congress conferred to the WMATC is fully described in Appendix "B" hereto consisting of several excerpts taken from the House and Senate committee reports accompanying H.J. Res. 402, the bill enacted as the Act of September 15, 1960, Public Law 86-794.

licensing and rate-making authority. No one could engage in the transportation covered by the Compact except upon its terms; and these included the issuance by the Commission of a certificate of public convenience and necessity. 4/

Under these circumstances, the sole question for determination herein is whether the operation being conducted by PSC between points within the Metropolitan District constitutes "transportation under the Compact" which is subject to the jurisdiction of the WMATC notwithstanding the fact that such operation is part of a movement commencing and ending at a point outside the Metropolitan District. In this connection, in passing, the United States Court of Appeals for the Fourth Circuit, in Alexandria, Barcroft & Wash. T. Co. v. Washington M.A.T. Com'n., 323 F2d 777, 780, (1963), after noting that the rules and decisions of the Interstate Commerce Commission "cannot generally be used to show the path the Transit Commission must follow", recognized the "right of the Transit Commission to establish,

4/ More recently, in Washington Metropolitan Area Transit Commission, et al. v. Universal Interpretive Shuttle Corporation, Cases Nos. 20,975 - 20,978, decided June 30, 1967, this Court has held that a for-hire motor carrier operation to be conducted, pursuant to a contract with the National Park Service, primarily on Federal property in the Metropolitan District under the administrative jurisdiction of the Department of Interior nevertheless required a certificate of public convenience and necessity from the WMATC

within statutory limitations, new rules based on its own conception of the needs of mass transit of persons in this highly populated area".

Article XII, Section 1(a) of the Compact defines the transportation covered as follows:

This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service except -

(1) - (3) [not relevant]

(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact...[Emphasis added]

In effect this Section applies to any transportation performed within the Metropolitan District, whether or not commencing and terminating at a point therein, except insofar as such transportation is part of a regular-route operation between a point in the Metropolitan District and a point outside thereof. Accordingly, the local sightseeing operations being performed by PSC in and about the District of Columbia and nearby Arlington and Mount Vernon, Virginia,

as part of irregular-route special and charter operations beginning and ending at points in New Jersey and Pennsylvania, require certification from the WMATC pursuant to the provisions of Section 4 of Article XII of the Compact.

The legislative history of the Compact clearly establishes the WMATC's jurisdiction over such local operations. By Public Law 24, 84th Congress, 69 Stat. 28, 33 (Second Supplemental Appropriations Act, 1955), the National Capital Planning Commission and the National Capital Regional Planning Council were authorized "to jointly conduct a survey of the present and future mass transportation needs of the National Capital region". Such survey, submitted on July 1, 1959, gave particular emphasis to a 1955 report prepared by a special consultant, Mr. Jerome M. Alper, entitled "Transit Regulations for the Metropolitan Area of Washington". This report,^{5/} actually the precursor of the Compact, contained the following statement revealing,

^{5/} Reproduced on pages 43-101 of the Hearings Before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, Eighty-Sixth Congress, First Session on H.J. Res. 402, Part I, August 26, 1959. The special significance of this report is noted on page 108; the language from the report quoted on page 7 herein is found on page 81.

from the very inception of the Compact, the intention of the drafters to have the WMATC regulate operations of the nature involved herein:

This commission would have exclusive jurisdiction over the movement of passengers for a charge between any points in the district by motor carrier or street railway. Both contract and common carriers performing such transportation would also be subject to the jurisdiction of the compact commission. No exemption would be afforded any motor carrier by virtue of the fact that the transportation performed within the district is performed in the course of an operation over a route, the major portion of which is outside of the district, and the carrier performing such transportation is subject to the jurisdiction of the Interstate Commerce Commission or any other agency of the federal government having jurisdiction over interstate commerce. Sightseeing or charter service within the metropolitan district performed by a carrier engaged in transportation subject to the compact law would also be subject to the jurisdiction of the compact commission. School buses and motor carriers operated by the federal government, the signatory States, or any political subdivision thereof, and any transportation by water would be exempt from the jurisdiction of the compact commission. Taxicabs would be subject to the jurisdiction of the compact commission only for interstate rate-making purposes. [Emphasis added]

The broad nature of the WMATC's jurisdiction contemplated by Mr. Alper was incorporated into Section 1(a) of Article XII of the Compact as set forth in H.J. Res. 402 of the 86th Congress. With respect to operations within the

Metropolitan District integrally related to operations outside thereof, the language of the Compact differed from Mr. Alper's thinking. Whereas Mr. Alper would have subjected all such operations to the WMATC's jurisdiction, Section 1(a)(4), as enacted, provided a limited exemption therefor in the following terms:^{6/}

This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District...except -

(4) transportation performed in the course of an operation over a regular route, the major portion of which is outside the Metropolitan District except where a major portion of the passenger traffic begins and ends within the Metropolitan District.
[Emphasis added]

The language of such exemption caused the Interstate Commerce Commission serious problems which were subsequently resolved by an amendment to Section 1(a)(4), as provided in Section 5 of the consent legislation, 74 Stat. 1051.^{7/} In its ultimate form, however, the exemption in Section 1(a)(4) was still confined to regular route operations.

^{6/} Page 5 of the aforementioned transcript of the August 26, 1959, hearing on H. J. Res. 402.

^{7/} See pages 38-40 and 50-51 of House Report No. 1621, 2nd Session, accompanying H.J. Res. 402 (May 18, 1960).

To summarize, then, the legislative history of the Compact makes it quite clear that the sightseeing services performed by PSC in the Metropolitan District, as part of an irregular-route special or charter operation commencing and terminating at a point outside the Metropolitan District, are subject to regulation by the WMATC.

In view of the fact that sightseeing operations in the Metropolitan District performed by carriers domiciled in the Metropolitan District are subject to regulation by the WMATC,^{8/} it is only reasonable that the drafters of the Compact intended that the competitive operations of carriers domiciled outside the Metropolitan District also be subject to such regulation. Each year millions of tourists come to Washington, D. C. to visit the many national monuments, museums, and memorials located in the area. According to official estimates, some 15 million visitors are expected in 1967 and such figure may grow to 35 million by 1980.^{9/} These tourists are the

8/ See, for example, Certificate No. 1 issued to White House Sightseeing Corporation which authorizes sightseeing or pleasure tours, in charter or special operations, from points within the Metropolitan District to points within the Metropolitan District. The following decisions, to name a few, affirm the WMATC's jurisdiction over such sightseeing operations: Alexandria, Barcroft & Wash. T. Co. v. Washington M.A.T. Com'n., supra; Gadd v. Washington Metropolitan Area Transit Com'n., 347 F2d 791 (D.C. Cir. 1965); Holiday Tours, Inc. v. Washington Met. Area Trans. Com'n., 352 F2d 672 (D.C. Cir. 1965).

9/ Government Exhibit No. 7, pages 2-3, in Washington Metropolitan Area Transit Commission, et al. v. Universal Interpretive Shuttle Corporation, supra.

patrons to whom the sightseeing carriers certificated by WMATC orient their services. To the extent that uncertificated carriers such as PSC can provide such tourists with similar services, operating over the same streets and visiting the same points of interest, destructive competition results which not only threatens the continued survival of the certificated carriers but also substantially curtails the uniform, orderly system of regulation envisioned by the enactment of the Compact.

In addition to the need to maintain a uniform system of regulation, there is another compelling reason for the drafters of the Compact having conferred to the WMATC jurisdiction over the involved operations. The WMATC has been delegated the responsibility to alleviate traffic congestion in the Metropolitan District, as provided in Articles II, V, and X of the Compact. With hundreds if not thousands of carriers such as PSC providing tourists to the Nation's Capital with sightseeing services to the myriad local points of interest, the traffic congestion in this area has increased tremendously.^{10/} Accordingly, the only way WMATC

^{10/} Congressional concern over the growing traffic congestion in the Washington Metropolitan Area was highlighted by Congressman Broyhill and Senator Robertson in the debates on H.J. Res. 402. See Congressional Record, 86th Congress, 2nd Session, Volume 106, Part 9, p. 11739, and Part 14, p. 18684.

can effectively discharge its mandate to alleviate such congestion is to exercise jurisdiction over such carriers. ^{11/}

Some indication of the volume of the sightseeing operations in the Metropolitan District being conducted by carriers such as PSC is readily available from an observation of the numerous out-of-state buses ringing the White House daily during the peak tourist periods. Most of these buses operate in the District of Columbia pursuant to "occasional certificates" issued by the Public Service Commission. Under the District's General License Law out-of-state carriers may engage in so-called "occasional" sightseeing operations for fifteen calendar days by obtaining free certificates from the Public Service Commission, with no limitation upon the number of vehicles that may be certificated. After its fifteen calendar days have been used up, an out-of-state carrier continuing to perform local sightseeing operations must pay a ^{12/} license tax of \$100 per annum for each vehicle used.

^{11/} The following language of Article XI of the Compact would seem to be particularly relevant to the determination of such jurisdiction: "In accordance with the ordinary rules for construction of interstate compacts, this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof."

^{12/} See D. C. Code (1961 Ed.) §47-2331(c) and (h). Article VII of the Compact specifically reserves the power of the signatories to "levy, assess and collect franchise or other similar taxes, or fees for the licensing of vehicles and the operation thereof".

It seems curious in passing that PSC should, on the one hand, comply with the aforementioned District law and, at the same time, ignore the Compact law vesting paramount jurisdiction over transportation in the District in the WMATC.^{13/}

One further comment is warranted. Section 20(a)(2) of Article XII of the Compact provides:

Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act. [Emphasis added]

This provision in no way derogates from the jurisdiction of the WMATC over transportation performed in the Metropolitan District. It was intended solely to preserve the authority of local carriers such as D. C. Transit, WV&M, WMA, AB&W and Atwoods, whose regular-route interstate operations in the Metropolitan District are subject to the jurisdiction

^{13/} According to records of the Public Service Commission, PSC licensed 13 vehicles in the 1966 license year and 14 vehicles in the 1965 license year.

of the WMATC, to engage in so-called "incidental charter operations" extending beyond the confines of the Metropolitan District notwithstanding the suspension of their underlying ICC certificates.^{14/} Section 20(a)(2) was not intended to apply to carriers such as PSC who have no regular-route operations in the Metropolitan District and whose ICC certificates have not been suspended.

Such intent is evidenced by the following legislative comments on H.J. Res. 402 which the ICC submitted to the House Judiciary Committee by letter dated September 16, 1959:^{15/}

The exceptions in the proviso of section 20(a)(2) presumably are intended to preserve the special and charter rights which each holder of a regular route passenger certificate issued under the Interstate Commerce Commission received under section 208(c) of the act... Without some such provision the suspension of the ICC certificate might be deemed to suspend also the special and charter rights.

^{14/} Under Section 208(c) of the Interstate Commerce Act, 49 U.S.C. 308(c), and regulations promulgated thereunder by the ICC, certificated regular-route carriers may transport special or chartered parties from points on their regular routes, or within the territory served thereby, to any point in the United States. By Act of November 10, 1966, 80 Stat. 1521, such "incidental" authority has been abolished as to certificates issued pursuant to applications filed after January 1, 1967.

^{15/} Page 43 of House Report No. 1621, supra.

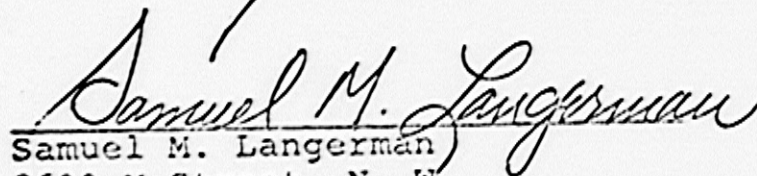
In the final analysis, the unambiguous purport of the Compact, as approved by an Act of Congress suspending the Interstate Commerce Act and other Federal laws inconsistent therewith and as recognized in recent judicial decisions, is to vest the WMATC with jurisdiction over the sight-seeing operations being performed by PSC in the Metropolitan District.

CONCLUSION

WHEREFORE, Complainant prays that the Commission, pursuant to Article XII, Section 13(c) of the Compact, compel Respondent and its employees to desist from engaging in any transportation subject to the provisions of Article XII, Sections 1(a) and 4(a) of the Compact until such transportation is authorized by a certificate of public convenience and necessity issued by the Commission.

Respectfully submitted,


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Before The
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In the Matter of:

D. C. TRANSIT SYSTEM, INC.)	
)	
Complainant)	
)	
vs.)	Formal Complaint No. 17
)	
PUBLIC SERVICE COORDINATED)	
TRANSPORT)	
)	
Respondent)	

STIPULATION OF FACTS

For the purpose of resolving the jurisdictional question involved in the above-entitled proceedings, D. C. Transit System, Inc., hereinafter referred to as Complainant, and Public Service Coordinated Transport, hereinafter referred to as Respondent, hereby agree and stipulate as follows:

1. Respondent is a common carrier of passengers for hire subject to the jurisdiction of the Interstate Commerce Commission by virtue of Certificates of Public Convenience and Necessity issued to it in Docket No. MC-3647 and various sub numbers thereunder. Pursuant to that auth-

ority, Respondent provides service over regular routes between points in New Jersey, and points in New York, Pennsylvania, or Delaware.

2. Pursuant to Section 208(c) of the Interstate Commerce Act, Respondent has authority to provide incidental interstate charter operations from points along its regular routes and from the areas served by its regular routes to points in other states and the District of Columbia, and return. It also holds Certificates of Public Convenience and Necessity from the Interstate Commerce Commission in Docket No. MC-3647 and various sub numbers thereunder, pursuant to which it can provide service in special operations from points in the States of New Jersey and Pennsylvania, to many points in the United States, including the District of Columbia, and return.

3. Pursuant to those authorities, the Respondent provided service on a tour for a chartering party which originated at Linden, New Jersey, and traveled to Washington, D. C. and return, commencing on October 14, 1966 at Linden, New Jersey, and ending at Linden, New Jersey on October 16, 1966. The tour patrons had overnight hotel accommodations in Washington, D. C. During the course of

that tour, the Respondent's bus transported the tour patrons over the streets and highways of the District of Columbia and Arlington and Mount Vernon, Virginia, where the tour patrons were taken to visit numerous points of historical interest in those areas. All of those passengers on that tour departed from and returned to the same bus at each such point of interest. All of those passengers on that tour commenced and ended their trips at Linden, New Jersey.

4. The Respondent's bus, which provided the service for the above tour, was licensed by the Public Service Commission of the District of Columbia to comply with the rules and regulations of that Commission.

5. The Respondent, by entering into this stipulation, does not in any way submit itself to the jurisdiction of the Washington Metropolitan Area Transit Commission, but expressly hereby reserves unto itself, the right to contest that jurisdiction and to institute proceedings at any time during the pendency of the instant matter, before any regulatory agency or in any court of competent jurisdiction to obtain a judicial determination of the Washington Metropolitan Area Transit Commission's

jurisdiction over the Respondent or any service being performed by the Respondent.

Excerpts from Legislative
History of the Compact
Bearing on WMATC's Exclu-
sive Jurisdiction in the
Metropolitan District

Pages 2-3 of Senate Report No. 1906 of the 86th Congress,
2nd Session, dated August 23, 1960:

The compact accomplishes a very simple and basic objective, but a most important one. In effect, the compact centralizes to a great degree in a single agency, the [WMATC], the regulatory powers of private transit now shared by four regulatory agencies. It will make possible the regulation of such transit within the metropolitan area without regard to the boundaries of political jurisdiction...In its capacity as the National Legislature, Congress grants its consent to the compact pursuant to the requirement of the Federal Constitution; removes Federal jurisdiction over the subject matter of the compact...

Pages 3, 5, 7, 9, 19, 21 and 29 of House Report No. 1621 of the 86th Congress, 2nd Session, dated May 18, 1960:

The purposes of the resolution [H.J. Res. 402] are...(3) to suspend Federal jurisdiction relating to or affecting transportation under the compact and to the persons engaged therein...

As the first step, the plan [transportation plan dated July 1, 1959, of the National Capital Planning Commission and the National Capital Regional Planning Council] recommends that immediate action be taken to improve the present public transit service by centralizing regulation of existing privately owned transit on a regional basis to overcome the barriers imposed by jurisdictional boundary lines. This is the function of the instant compact... The

centralization of regulatory authority in a single agency, which would be substantially achieved under the subject legislation, is an essential step in bringing about a more satisfactory transit service...

In article VIII the compact recognizes that affirmative legislation by the Congress [is required] to remove Federal jurisdiction from the sphere of compact action...The compact, therefore, provides that it shall become effective 90 days after its adoption by the signatories and consent thereto by the Congress and the enactment by the Congress of legislation to remove the Federal jurisdiction from the area of compact activity...

Section 3 of House Joint Resolution 402 provides for removal of Federal jurisdiction relating to or affecting transportation under the compact and to the persons engaged therein. The removal of Federal jurisdiction is by suspension of applicable laws and regulations...

The Interstate Commerce Commission is the Federal agency most affected by the compact. The jurisdiction of the [WMATC] over the interstate aspects of transit in the metropolitan district would be carved out of the present jurisdiction of the Interstate Commerce Commission...

There follows in parallel columns a listing of the Federal laws which are suspended in whole or in part to the extent that such laws are inconsistent with or in duplication of the provisions of the compact and of the resolution [H.J. Res. 402]: 49 U.S. Code (1958 ed.) Chapter 8, Interstate Commerce Act - Motor Carriers.

49
APPENDIX 'H'

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In the Matter of

D. C. TRANSIT SYSTEM, INC.,
a corporation,

v.

PUBLIC SERVICE COORDINATED TRANSPORT,
a corporation

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:
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Formal Complaint
No. 17

BRIEF FOR INTERVENOR

Communications may be sent to:

Robert J. Corber
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Due Date: October 6, 1967

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BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In the Matter of	:	
	:	
D. C. TRANSIT SYSTEM, INC.,	:	
a corporation,	:	Formal Complaint
	:	No. 17
v.	:	
	:	
PUBLIC SERVICE COORDINATED TRANSPORT,	:	
a corporation	:	

BRIEF FOR INTERVENOR

Introduction

On March 2, 1967, the D. C. Transit System, Inc. (DCT) filed complaint against respondent, Public Service Coordinated Transport (Public Service), alleging, inter alia, that the latter is performing passenger transportation for hire between points in the District of Columbia without appropriate authority from this Commission. On April 20, 1967, Public Service replied to the complaint, denying that it is engaged in transportation subject to the jurisdiction of the Commission. On April 18, 1967, the National Association of Motor Bus Owners was permitted to intervene.

A stipulation of facts has been entered into by the complainant and respondent, dated August 4, 1967. The stipulation shows that respondent is the holder of a certificate

from the Interstate Commerce Commission authorizing the interstate transportation of passengers by motor bus between points in New Jersey, and points in New York, Pennsylvania, or Delaware. It further stipulates that respondent holds certificates from the Interstate Commerce Commission entitling it to transport passengers in special operations from points in New Jersey and Pennsylvania to many points in the United States, including the District of Columbia, and return.

A typical movement of which complaint is made is described in the stipulation. It is a chartering party originating in Linden, New Jersey, and going to Washington, D. C. and return. It commenced on October 14, 1966 and terminated on October 16, 1966. The members of the chartering party stayed overnight in hotel accommodations in Washington and during their stay in the metropolitan area were taken to points of historical interest in the District of Columbia and Arlington and Mount Vernon in Virginia. The same bus of Public Service was used for all the transportation.

The Authority Of Respondent

As the holder of a regular route certificate issued by the Interstate Commerce Commission, the respondent had the right under Section 208(c) of the Interstate Commerce Act, 49 U.S.C. § 308(c), to transport special or chartered parties from points along its regular route to any place in the United

States, under regulations of the ICC. At the time this charter was performed, Section 208(c) provided that -

"Any common carrier by motor vehicle transporting passengers under a certificate issued under this part may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed." ^{1/}

The applicable regulations of the ICC defined origin territory for charter movements as follows:

"Any common carrier of passengers by motor vehicle subject to the regulations in this part may transport special or chartered parties (a) which originate at any point or points on the regular route or routes, or at any off-route point or points, authorized to be served by such carrier, or (b) which originate at any point or points within the territory served by its regular route or routes." (49 C.F.R. § 178.3)

^{1/} P.L. 89-804, 80 Stat. 1521, effective November 10, 1966, amended Section 208(c) to read:

"Any common carrier by motor vehicle transporting passengers under a certificate issued under this part pursuant to an application filed on or before January 1, 1967, or under any reissuance of the operating rights contained in such certificate, may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed."

The legislation preserved incidental charter authority for certificates issued before it took effect. See, Interstate Charter Rights For Carriers Of Passengers, 34 ICC Practitioners Journal 221 (1967).

The same regulations define destination territory in the following language:

"Common carriers of passengers by motor vehicle subject to the regulations in this part may transport special or chartered parties in interstate or foreign commerce to any place or point in the United States. Special or chartered parties may not be transported from the destination territory described in this rule to the origin territory described in § 178.3, except on return movement of the same special or charter party as provided therein." (49 C.F.R. 178.3)

Thus, Public Service held authority from the Interstate Commerce Commission to conduct the charter in issue, under its incidental charter rights conferred by Section 208(c) of the Act as well as its special operations certificate. Moreover, since the charter originated on and was returned to a point on Public Service's regular route outside the metropolitan area it could not have been performed by DCT. At the most, DCT could hope to participate in such movements by picking up the passengers at the metropolitan area border and returning them there, with considerable inconvenience and time-consuming interruptions for the passengers.

The Issues

Inasmuch as Public Service had authority from the Interstate Commerce Commission to conduct this interstate charter, the question is whether that authority was superseded

by the legislation creating this Commission and defining its powers. If the transportation is covered by the Compact,^{2/} as amended,^{3/} federal laws in conflict with this Commission's jurisdiction are suspended (Compact, Art. VIII, P.L. 86-794). However, whether the transportation is covered depends upon Section 1(a)(4), Art. XII, Title II, which exempts from the Compact -

" . . . transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District^{4/} and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce . . . "

As shown hereafter, the legislative intent and the language of this section exclude this transportation from the Compact. If it were otherwise, a question would arise under Section 20(a)(2), Art. XII, Title II of the Compact, whether the special and chartered party authority of Public Service does not remain in effect notwithstanding any other provisions

^{2/} Washington Metropolitan Area Transit Regulation Compact, Act of September 15, 1960, 74 Stat. 1031, P.L. 86-794.

^{3/} See Act of October 9, 1962, 76 Stat. 764, P.L. 87-767.

^{4/} The Metropolitan District embraces the District of Columbia, the Virginia cities of Alexandria and Falls Church, the Virginia counties of Arlington and Fairfax, Dulles Airport, and the Maryland counties of Montgomery and Prince Georges (Compact, Art. I, Title I).

of the Compact. That section provides that:

"Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act."

This Commission Has Previously Ruled, Correctly, That Interstate Charter Rights Of ICC Certificated Carriers Are Not Affected By The Compact

In 1963 and 1964 this Commission had pending before it applications for grandfather certificates under Section 4(a), Article XII, Title II of the Compact, which had been filed by such ICC certificated carriers as The Greyhound Corporation, Safeway Trails, Inc., Virginia Stage Lines, Inc., and Baltimore and Annapolis Railroad Company. The applications were dismissed on the ground that "it appears to the Commission that the transportation for which authority is sought is exempt from the jurisdiction of the Commission pursuant to Section 1(a)(4), Article XII, Title II, of the Compact, as amended." (WMATC Orders Nos. 311 and 366).

In Order No. 311 the Commission added a reference to incidental charter authority under the Interstate Commerce

Act, saying:

"The proposed action of the Commission in dismissing these applications cannot affect the authority of these carriers to transport special and chartered parties as now authorized by the Interstate Commerce Act."

The corresponding statement in Order No. 366 is that -

"The action of the Commission in dismissing these applications does not affect the authority of these carriers to transport special and chartered parties as now authorized by certificates of public convenience and necessity issued by the Interstate Commerce Commission."

DCT has not argued in its brief that there is error in the Commission's ruling that special and chartered party authority under the Interstate Commerce Act is not covered by the Compact. It does not, and could not, cite changes in the law or new evidence of legislative intent which would make the prior decision of the Commission erroneous. That decision stands as a valid interpretation of the legislation, amply supported by the language of the Compact and its legislative history.

The Compact Does Not Cover ICC
Approved Interstate Charter
Operations

DCT reads too literally and too narrowly the provisions of Section 1(a)(4) of Article XII, Title II, of the Compact which excepts from coverage "transportation performed

in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce." The reference to regular route does not exclude ICC approved interstate charter operations under Section 208(c) of the Interstate Commerce Act.

It has always been understood that charter rights under Section 208(c) are incidental to, an integral part of, and inherently bound up with regular route rights. They are such an inseparable part of regular route operations that they are not severable from the regular route authority. Thus, in Ex Parte MC-29, Regulations, Special or Chartered Party Service, 29 MCC 25 (1939), the ICC said:

"Section 208(c) is not a limitation upon any rights authorized by section 206(a) of the Act, but confers an additional right, without proof, and which is not severable, to carriers operating over a regular route or routes and between fixed termini." (29 MCC at 46, emphasis added).

In further explanation of the regular route character of these rights the Commission stated in Red Star Lines, Inc., Common Carrier Application, 27 MCC 614 (1941) that:

"In other words, the act contemplates the placing of passenger carriers in two categories, (1) those engaged in operations over regular routes and between fixed termini with certain incidental special or charter rights and, (2)

those engaged in special or charter operations without regard to any regular-route or fixed termini operation." (27 MCC at 617-618, emphasis added).

Similar statements have been made by the Commission in Peninsula Transit Corp., Common Carrier Application, 1 MCC 440, 442 (1937) and Lincoln Tunnel Applications, 12 MCC 184, 196 (1939).

Thus, interstate rights for charters under the Interstate Commerce Act are legally an inseparable part of regular route authority. It would be anomalous indeed for the framers of the Compact to exclude one from coverage without excluding the other -- to make separable that which the Commission and the Congress^{5/} have always considered inseverable.

This interpretation of Section 1(a)(4) of Article XII does not rest alone on the regular route personality of interstate charter rights. Congress plainly expressed the intent to exclude transportation involving points outside the

^{5/} In amending the Act in 1966, Congress reiterated the inseparable character of charter rights, saying:

"The 'reissuance' of the operating rights contained in a certificate issued prior to January 1, 1967, would carry with it incidental charter rights, but the Committee does not intend by this language to permit the severance and separate transfer of incidental charter rights from the underlying basic regular route authority." (S. Rep. 1552, 89th Cong., 2d Sess., p. 1).

Metropolitan District. Thus, in rejecting a proposal to make the Compact cover all transportation in the District, whether or not it involved points outside the District, the Committees reporting out the legislation in the present form of Section 1(a)(4), said:

"Amendment No. 8 expresses the Congressional policy that jurisdiction of the Compact should extend only to transportation performed solely within the proposed metropolitan district." (H. Rep. 1621, 86th Cong., 2d Sess., p. 3, emphasis added).^{6/}

Again, Congress said:

"... The effect of this amendment from the standpoint of division of jurisdiction is to treat the metropolitan district as a State with the consequence that the Washington Metropolitan Area Transit Commission would have jurisdiction over purely intrametropolitan district transportation and the Interstate Commerce Commission would have jurisdiction over transportation crossing the metropolitan district boundaries."

It hardly need be mentioned that no state regulates in any way authority for interstate charters performed by ICC certificated operators. Nothing different was intended for this Commission.

^{6/} The Senate Report is similar to the House Report in all material respects.

Section 20(a)(2) Of Article XII,
Title II Of The Compact Further
Evidences Intent To Exclude ICC
Authorized Charter Operations

Congress further evidenced its intent to exclude interstate charter operations from the Compact by the language of Section 20(a)(2) of Article XII, Title II. That section provides that ICC certificates issued to carriers subject to the jurisdiction of WMATC are suspended for the duration of the Compact, except that -

". . . suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act."

It should be observed that if it is correct, as contended by NAMBO, that Section 1(a)(4) excludes charter rights under Section 208(c) of the Interstate Commerce Act from the Compact, the applicability of Section 20(a)(2) is never reached. On the other hand, if DCT were correct in claiming such rights are covered by the Compact (which we deny), Public Service's operations could be embraced by Section 20(a)(2) because they would be interstate charter operations pursuant to a certificate of the ICC. In that event the certificate (or, at least, so much of it as relates to charter operations in the Metropolitan District) would be

suspended by reason of Section 20(a)(2), except that it would not be suspended as to "special and chartered parties as now authorized by the Interstate Commerce Act." This bizarre result would not arise under proper interpretation of Section 1(a)(4).

DCT apparently seeks to avoid this result by arguing that Section 20(a)(2) was intended to benefit only local carriers. The problem is that this argument withers in the light of legislative history. The House Committee reported that:

"In order to protect the existing rights of carriers to engage in interstate special or charter operations under the certificates issued by the Interstate Commerce Commission, section 20(a)(2) expressly states that the suspension of certificates or permits issued by the Interstate Commerce Commission shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act." (H. Rep. 1621, 86th Cong., 2d Sess., p. 18).

The Interstate Commerce Commission also expressed this understanding of the provision in a letter quoted in the House Report:

"The exceptions in the proviso of section 20(a)(2) presumably are intended to preserve the special and charter rights which each holder of a regular route passenger certificate issued under the Interstate Commerce Commission received under section 208(c) of the Act. This provision authorizes each holder of a certificate to transport special and charter parties from the territory of its regular route to any place. Without some such

provision the suspension of the ICC certificate might be deemed to suspend also the special and charter rights." (Id. at 43).

No lines were drawn between local and non-local carriers. The intent is unequivocal that the provision encompasses any ICC certificate issued to any carrier subject to the jurisdiction of WMATC. Thus, if DCT were correct that Public Service's interstate charter operations are subject to the jurisdiction of WMATC, its ICC certificate authority for such operations could be suspended under this provision. However, by the terms of the provision, the suspension would not extend to charter operations and, therefore, Public Service would not be required to obtain additional authority from this Commission for the charter in dispute.

This points up the myriad absurd results which could stem from DCT's position. Carried to its ultimate it could mean that the certificate of Public Service for regular route operations in New York, New Jersey, Pennsylvania or Delaware would be suspended in toto except for the charter operations into the Metropolitan District. This would produce the strange consequence of WMATC jurisdiction over operations totally unrelated to the Metropolitan District while leaving the ICC with jurisdiction over charter operations into the District. If, on the other hand, the DCT position leads to suspension of only that part of the

certificate relating to charter operations into the District, it means that WMATC has jurisdiction which it may not effectuate because suspension "shall not affect" charter operations under the Interstate Commerce Act. These absurdities are never encountered by interpretation of the Compact not to cover charter operations under ICC authority. The fact that this is the intent of the Compact is clear from the provisions of Section 20(a)(2) as well as the history of the legislation.

Decisions By Other Authorities
Support This Commission's
Interpretation Of The Compact

The issue in this case was presented in another form to the ICC in D. C. Transit System, Inc. v. Atwood's Transport Lines, Inc., No. MC-C-5263. There D. C. Transit complained that Atwood, whose regular route certificate had been suspended by this Commission, was engaging in interstate charters in violation of the Interstate Commerce Act. Atwood contended that ICC jurisdiction had been removed by the Compact. The Examiner ruled that the ICC jurisdiction was not eliminated by the Compact, stating that:

"It is patently clear from a reading of the applicable provisions of the Compact that WMATC's regulatory jurisdiction is limited to a definitely defined area and that regulations (sic) of interstate transportation outside of this limited area remains within the jurisdiction of

this Commission. More specifically, incidental charter operations are expressly excluded from the provisions of the Compact and therefore remain subject to the jurisdiction of this Commission. Defendant's request for dismissal on jurisdictional grounds is therefore without merit and should be denied." 7/

An analogous decision was rendered by the Supreme Court in City of Chicago v. Atchison, T. & S.F. Ry. Co., 357 U.S. 77 (1958). In that case the City of Chicago adopted an ordinance requiring certificates to be obtained by a company offering passenger transportation between railroad terminals in the city. The Court held the ordinance invalid as conflicting with the Interstate Commerce Act which regulates rail carrier transfer services between terminals, noting that:

"... Of course the City retains considerable authority to regulate how transfer vehicles shall be operated. It could hardly be denied, for example, that such vehicles must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require registration of these vehicles and exact reasonable fees for their use of the local streets. . . . All we hold here, and all we construe the Court of Appeals as holding, is that the City has no power to decide whether Transfer can operate a motor vehicle service between terminals for the railroads because this service is an integral part of interstate railroad transportation authorized and subject to regulation under the Interstate

7/ Copy of report attached, see p. 4 thereof.

Commerce Act" (357 U.S. at 88-89).^{8/}

An effort may be made to distinguish this decision on the ground it involves Federal-State (City) conflicts, whereas here Congress legislates for the Interstate Commerce Act as well as for the Compact and there can be no conflicts. The answer to such an argument is that Congress made it clear the Compact was to deal "solely" with intrametropolitan transportation in the same way a state regulates transportation within its borders. In short, Congress separated local from Federal regulation and DCT's position would create conflicts between the two equally as great as in the City of Chicago case.

Confusion, Conflicting Regulation
And Injury Would Result From DCT's
Proposed Interpretation Of The
Compact

Probably every interstate carrier in the United States operates, at some time or another, charters into the area of Washington, D. C. If DCT were sustained every one of these carriers, regardless of how limited and isolated are its charters, would be subject to the regulation of this Commission as well as the Interstate Commerce Commission

^{8/} Subsequent efforts by the City to exact further regulation were also stricken down by the Court. Railroad Transfer Service, Inc. v. City of Chicago et al., _____ U.S. _____, 87 S. Ct. 1095 (March 27, 1967).

for interstate operations.

Conflicts in regulation would be numerous and difficult. Under Article XII of Title II this Commission regulates the issuance of securities (Section 11), consolidations and mergers (Section 12), accounts and records (Section 10), through routes and joint fares (Section 7), insurance (Section 9), and fares (Section 6). The ICC has all these powers with respect to interstate carriers (49 U.S.C.A. §§ 314, 5, 320, 316 and 304). Heavy penalties are prescribed in the enabling legislation of both Commissions for violations of orders. (Cf. § 18, Art. XII, Title II of Compact and 49 U.S.C.A. § 322). Carriers could be caught between conflicting regulations and subject to heavy penalties for compliance with the regulation of one agency resulting in non-compliance with the other.

A principle of statutory construction as old as the law itself is that absurd or unjust consequences are to be avoided in determining legislative intent. U.S. v. Kirby, 7 Wall. 482, 486 (1869); White v. Hopkins, 51 F.2d 159, 162 (5 Cir. 1931). Such consequences would surely flow from DCT's position in the form of separation of charter operations from regular route operations contrary to the intent of Congress, possible suspension of regular route certificates issued by the ICC for operations unrelated to the Metropolitan District, conflicting regulations, prohibitions of interstate charters

into the District contrary to powers exercised by states, and many others.

These injustices and absurdities would never arise if there is adherence to the intent of the framers of the Compact. WMATC has jurisdiction over transportation "solely" within the Metropolitan District which does not involve movements to and from points outside the District. The ICC has jurisdiction over the remainder. This division of responsibility permits an orderly process of regulation, readily understandable and convenient, and avoids conflicts and service disruptions contrary to the transportation needs of the traveling public.

Conclusion

Interstate charters performed under certificates issued by the Interstate Commerce Commission were never intended to be covered by the Compact. It is such a charter that Public Service conducted in this case. Accordingly, the complaint should be dismissed on jurisdictional grounds, in keeping with this Commission's determinations in Orders

Nos. 311 and 366.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this date served the foregoing by mailing copies thereof, postage prepaid and properly addressed to the following:

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October 4, 1967

APPENDIX 'I'

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In the Matter of:)

D. C. TRANSIT SYSTEM, INC.)

Complainant)

vs.)

PUBLIC SERVICE COORDINATED)
TRANSPORT)

Respondent)

FORMAL COMPLAINT NO. 17

REPLY BRIEF OF RESPONDENT, PUBLIC
SERVICE COORDINATED TRANSPORT

RICHARD FRYLING,
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By:

THOMAS J. McCLUSKEY

Due Date: October 6, 1967.
Dated: October 5, 1967.

STATEMENT OF QUESTION INVOLVED

Has Respondent, Public Service Coordinated Transport, conducted transit operations between points in the District of Columbia Metropolitan Area which were subject to the jurisdiction of the Washington Metropolitan Area Transit Commission?

INTRODUCTION

Respondent, Public Service Coordinated Transport (hereinafter referred to as Public Service), respectfully urges this Commission in reviewing the pleadings and briefs, to bear in mind always that there is but one and only one issue to be decided and that is the question of jurisdiction. That is so because the opening Brief of D. C. Transit System, Inc. (hereinafter referred to as D. C. Transit), alludes to matters which are not in issue.

STATEMENT OF THE CASE

D. C. Transit, on March 2, 1967, filed with the Washington Metropolitan Area Transit Commission (hereinafter referred to as WMATC), a Complaint against Public Service, alleging that Public Service was performing passenger transportation for hire between points in the District of Columbia without the requisite authority from the WMATC.

Public Service filed an Answer to that Complaint on April 20, 1967, denying that it was engaged in transportation subject to the jurisdiction of the WMATC. An Order of the Commission dated April 18, 1967, permitted

the National Association of Motor Bus Owners to intervene in this proceeding. D. C. Transit and Public Service entered into a Stipulation of Facts dated August 4, 1967, which has been filed with the Commission and became a part of this record. By that Stipulation, it was agreed that Public Service was a common carrier of passengers for hire, subject to the jurisdiction of the Interstate Commerce Commission, which authorized Public Service, pursuant to Certificates of Public Convenience and Necessity issued to it in Docket No. MC-3647 and various sub numbers thereunder, to transport passengers and their baggage, by motor vehicle, in interstate commerce, over regular routes, between points in New Jersey, and points in New York, Pennsylvania, and Delaware.

It was also agreed by the Stipulation that pursuant to Section 208(c) of the Interstate Commerce Act, Public Service was authorized to provide incidental charter operations from points along its regular routes and from areas served by its regular routes, to points in other states and the District of Columbia and return.

It was also agreed that pursuant to other Certificates of Public Convenience and Necessity issued to Public Service in Docket No. MC-3647 and various sub numbers thereunder, Public Service can provide service

in special operations from points in the States of New Jersey and Pennsylvania, to many points in the United States, including the District of Columbia and return.

It was also stipulated that Public Service provided service on a tour for a chartering party which originated at Linden, New Jersey, and traveled to Washington, D.C. and return, commencing on October 14, 1966 at Linden, New Jersey, and ending at Linden, New Jersey on October 16, 1966.

On that trip, the tour patrons had overnight hotel accommodations in Washington, D.C. During the course of that tour, Public Service's bus transported the tour patrons over streets and highways of the District of Columbia and Arlington and Mount Vernon, Virginia, where the tour patrons were taken to visit numerous points of historical interest in those areas. All of those passengers on the tour left and returned to the same bus at each point of interest, and all commenced and ended their trips at Linden, New Jersey.

It was agreed also in that Stipulation that Public Service's bus which provided service for the tour was licensed by the Public Service Commission of the District of Columbia to comply with the rules and regulations of that Commission. By that Stipulation it was also agreed that by entering into the Stipulation, Public

Service did not submit to the jurisdiction of the WMATC.

ARGUMENT

POINT I

PUBLIC SERVICE OPERATES
PURSUANT TO AUTHORITY
ISSUED TO IT BY THE
INTERSTATE COMMERCE COM-
MISSION AND IS NOT SUB-
JECT TO THE JURISDICTION
OF THE WASHINGTON METRO-
POLITAN AREA TRANSIT
COMMISSION.

Public Service has been a common carrier of passengers for hire in interstate commerce, subject to the jurisdiction of the Interstate Commerce Commission since the inception of the Motor Carrier Act in 1935. Over the intervening years, it has provided daily regular-route service for passengers in the New York-New Jersey Metropolitan Area, and between points in New Jersey and New York, to Pennsylvania and Delaware.

As an integral part of that regular-route service, it has provided charter and special services to many points in the continental United States and return, pursuant to Certificates of Public Convenience and Necessity issued to it by the Interstate Commerce Commission, and pursuant to Section 208(c) of the

Interstate Commerce Act* which reads:

"Any common carrier by motor vehicle transporting passengers under a certificate issued under this part may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed."

As a part of its charter and special services, Public Service has been for many years transporting groups of people to the Nation's Capitol and historical points of interest in areas contiguous to the District of Columbia.

Public Law, 86-794, 86th Congress, H.J., Res. 402, September 15, 1960, a Joint Resolution of Congress, granted consent and approval to the States of Virginia and Maryland, and the District of Columbia, to enter into a Compact related to the regulation of mass transit in the Washington District of Columbia Metropolitan Area.

That regulation had been divided prior to the enactment of the Joint Resolution among the public regulatory agencies of those States, the District of Columbia, and the Interstate Commerce Commission.

The WMATC came into being as a result of the passage of that Joint Resolution of Congress.

*This section of the Act has been amended, giving incidental charter rights under a certificate issued pursuant to an application filed on or before January 1, 1967. The legislation also preserved incidental charter authority for certificates issued before the legislation became effective.

It is quite evident that the intent of Congress in establishing this Compact was to relieve a situation where divided regulatory responsibility was not conducive to the development of an adequate system of mass transit for the area encompassing the District of Columbia, the Northern area of Virginia, and the Southern area of Maryland.

It is quite evident from the legislative history resulting in the Joint Resolution establishing the Compact that what Congress intended was an orderly regulation of the passenger carrier facilities which transported commuters to and from their daily tasks within the area encompassed by the Compact. That is so because during hearings prior to the enactment of the Compact, and in the enactment itself, mention was always made of "mass transit".

The modern conception of mass transit is movement of great numbers of passengers on a daily basis within a congested area to and from places of employment as distinguished from movement of large or small numbers of persons sporadically for pleasure, entertainment, education, and leisurely travel.

It is clear that Congress, by establishing this Compact, intended only to regulate and have the WMATC assume jurisdiction over regular-route operations.

That is shown beyond question when Section 1(a)(4), Article XII, Title II of the Compact is read and analyzed. That Section reads:

"This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such service except - (1)-(3) (not applicable).

"(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; * * *

Nowhere in the Compact does Congress give to the WMATC jurisdiction over charter or special services. Language is always employed which connotes mass transit (commuter service) and regular-route operations.

Assuming only for the sake of argument that the operations performed by Public Service were subject

to the jurisdiction of the WMATC, then Section 1(a) (4), Article XII, Title II of the Compact which exempts transportation performed in the course of an operation over a regular route between a point in the Metropolitan District and a point outside the Metropolitan District, would apply to the operations of Public Service.

The reference made in that Section to a regular route does not exclude charter operations performed under Section 208(c) of the Interstate Commerce Act.

In Ex Parte MC-29 Regulations Special or Chartered Party Service, 29 M.C.C. 25 (1939), at page 46, the Interstate Commerce Commission said:

"Section 208 (c) is not a limitation upon any rights authorized by section 206 (a) of the act, but confers an additional right, without proof, and which is not severable, to carriers operating over a regular route or routes and between fixed termini; * * * "

That statement shows that charter rights under Section 208(c) are incidental to and an integral part of regular-route rights. They are granted without any additional proof when an application is made for regular-route authority, and therefore, are not severable from the regular-route authority.

The interpretation of Section 1(a)(4) of Article XII, Title II does not rest alone on the regular-route personality of interstate charter rights. Congress, in enacting the Compact, did not intend to include transportation of passengers in interstate commerce which commenced and ended outside of the area encompassed by the Compact, even though transportation was performed within that area.

If the contention of D. C. Transit is correct in claiming that operations performed by Public Service pursuant to Section 208(c) of the Act are covered by the Compact, which is not admitted, then Section 20(a)(2) of Article XII, Title II of the Compact would become operative. That Section reads:

"(2) Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit holder to transport special and charter parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act."

Following D. C. Transit's argument through logically, the Certificates of Public Convenience and Necessity held by Public Service, from which its

incidental charter authority is derived, would be suspended except for the transportation of chartered or special parties. This would result in an anomalous situation.

D. C. Transit in its Brief at page 12, places a wholly unwarranted interpretation on Section 20(a)(2), Article XII, Title II of the Compact when it states that this Section was enacted only for the benefit of local carriers whose regular operations in the Metropolitan District are subject to the jurisdiction of the WMATC, in order that those local carriers could conduct incidental charter operations beyond the confines of the Metropolitan District.

In other words, the local carriers should be allowed to transport charter and special parties to any of the States of the United States, but local carriers from those States should not be allowed to transport charter and special parties into the Metropolitan District for sightseeing purposes. That would be unjustly discriminatory and was never intended by Congress.

Therefore, it is urged respectfully that the services performed by Public Service which are the subject matter of this Complaint action, were performed pursuant to Public Service's Interstate Commerce Commission authority and are not subject to the jurisdiction of the WMATC.

POINT II

THE WMATC HAS RULED PREVIOUSLY THAT SERVICE PERFORMED PURSUANT TO INTERSTATE COMMERCE COMMISSION CHARTER RIGHTS IS NOT SUBJECT TO THE JURISDICTION OF THE WMATC.

The Greyhound Corporation, Safeway Trails, Inc., Virginia Stage Lines, Inc., and Baltimore and Annapolis Railroad Company filed applications with the WMATC, seeking grandfather certificates pursuant to Section 1(a)(4), Article XII, Title II of the Compact as amended.

Those applications were dismissed by Orders Nos. 311 and 366 of the WMATC served September 20, 1963, and June 17, 1964, respectively.

The WMATC in those Orders dismissing the applications said:

"It appears to the Commission that the transportation for which authority is sought is exempt from the jurisdiction of the Commission pursuant to Section 1(a)(4), Article XII, Title II of the Compact as amended."

In Order 311 the WMATC also said:

"The proposed action of the Commission in dismissing these applications cannot affect the authority of these carriers to transport special and chartered parties as now authorized by the Interstate Commerce Act."

It is urged respectfully that under the doctrine of Stare Decisis, the above two Decisions of the WMATC should be dispositive of the issues in the instant Complaint action.

POINT III

DECISIONS BY THE UNITED
STATES SUPREME COURT
SUPPORT THE WMATC'S
INTERPRETATION OF THE
COMPACT.

In the case of City of Chicago v. Atchison, T. & S.F. Ry. Co., 357, U.S. 77 (1958), the facts showed that each day thousands of railroad passengers traveled through Chicago, Illinois on continuous journeys from one state to another. Chicago was the terminus for the railroads which transported these people, and it was necessary to change trains to continue their journey. There were eight terminals in Chicago and passengers frequently arrived at a station different from the one at which they would board an outgoing train to continue their journey.

For many years the railroads had an arrangement with Parmelee Transportation Company to carry those passengers between stations.

The railroads discontinued that arrangement and engaged another company specially organized for the

purpose of transporting the passengers.

At the time this new arrangement was made, the City of Chicago had in effect a detailed plan for the regulation and licensing of public passenger vehicles for hire, including transfer vehicles as used by the railroads.

The Chicago Municipal Code provided that no license for a transfer vehicle would issue unless the City Commissioner of vehicles determined that public convenience and necessity required the service.

The company organized by the railroad, because the City of Chicago threatened to arrest and prosecute the drivers, instituted a suit in the United States District Court asking for a judgment that the licensing ordinance was either inapplicable or invalid. The complaint asserted that the City's requirement of a Certificate of Public Convenience and Necessity was inconsistent with the provisions of the Interstate Commerce Act as well as the Commerce Clause of the Constitution, insofar as it applied to vehicles transferring interstate passengers from one railroad station to another under agreement with the railroads.

The district judge dismissed the complaint. The Decision was reversed by the Circuit Court of Appeals. The United States Supreme Court affirmed the Decision of

the Circuit Court of Appeals holding the section of its municipal code requiring a Certificate of Public Convenience and Necessity involved as conflicting with the Interstate Commerce Act, which regulates rail carrier transfer services between terminals, and in its Decision at pages 88-89, said:

"We are fully aware that use of local streets is involved, but no one suggests that Congress cannot require the city to permit interstate commerce to pass over those streets. Of course the City retains considerable authority to regulate how transfer vehicles shall be operated. It could hardly be denied, for example, that such vehicles must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require registration of these vehicles and exact reasonable fees for their use of the local streets. Cf. Fry Roofing Co. v. Wood, 344 U. S. 157 (9 Federal Carriers Cases 130,810); Capitol Greyhound Lines v. Brice, 339 U. S. 542. All we hold here, and all we construe the Court of Appeals as holding, is that the City has no power to decide whether Transfer can operate a motor vehicle service between terminals for the railroads because this service is an integral part of interstate railroad transportation authorized and subject to regulation under the Interstate Commerce Act. Cf. Castle v. Hayes Freight Lines, 348 U. S. 61 (10 Federal Carriers Cases 130,956)."

The controversy involved in the above case has continued for almost a decade and in March, 1967¹, the United States Supreme Court again decided the question in the case of Railroad Transfer Service v. City of

Chicago et al., 18 L ed 2d 143, 87 S Ct 1095 (March 27, 1967).

In that case, the facts showed that Chicago had amended its Municipal Code in an effort to bring the operations of Railroad Transfer Service under its jurisdiction. The Court in its opinion said:

"The rationale of Atchison compels our holding that the provisions of the ordinance now challenged by Transfer cannot be validly applied to it. In Atchison, recognizing that Transfer's 'service is an integral part of interstate railroad transportation authorized and subject to regulation under the Interstate Commerce Act,' id., 357 US at p. 89, 24 PUR3d at p. 509, we pointed to various provisions of the act which in our view completely precluded the city 'from exercising any veto power over such transfer service,' id., 357 US at p. 85, 24 PUR3d at pp. 506, 507. The Act, as we said in Atchison, gives the railroads, not the city, the 'discretion to determine who may transfer interstate passengers and baggage between railroad terminals.' Id., 357 US at pp. 84, 85, 24 PUR3d at p. 506. That power, that discretion, is precisely what the comprehensive licensing scheme of the amended ordinance purports to reserve to the city. It matters not that the city no longer seeks to exercise that power by requiring a showing of public convenience and necessity. The total effect of the current ordinance on Transfer's operations and the burdens it places on interstate commerce are the same. As we recognized in Atchison, the city retains authority to insist that Transfer obey 'general safety regulations' such as traffic signals and speed limits. Id., 357 US at p. 88, 24 PUR3d at p. 508."

Both of those cases are apposite to the question involved in the instant matter. The railroad passengers were persons traveling in a continuous movement in interstate commerce. The tour patrons carried by Public Service from Linden, New Jersey to the Washington Metropolitan Area and return to Linden, were interstate passengers who contracted for a continuous trip in interstate commerce, commencing at Linden, New Jersey, to the Washington Metropolitan Area and return to Linden, New Jersey.

The Supreme Court of the United States has decided that any regulation of a local authority which attempts to control any part of that type of movement, is invalid and of no effect because such movement is controlled by the provisions of the Interstate Commerce Act.

POINT IV

THE ONLY QUESTION TO BE
DECIDED IN THIS COMPLAINT
ACTION IS THAT OF JURIS-
DICTION.

In the introduction to this Reply Brief, it was requested that the WMATC keep in mind that the only question to be decided in this matter was a jurisdictional one. D. C. Transit has alluded to

matters which are not in issue. D. C. Transit in its Brief at pages 9 and 10 stated that to permit uncertificated carriers such as Public Service to carry their patrons on sightseeing trips in the Metropolitan District, would result in destructive competition to D. C. Transit and would threaten the continued survival of D. C. Transit and other certificated carriers.

D. C. Transit should remember that the issue being determined here is solely that of jurisdiction and does not involve an application for a Certificate of Public Convenience and Necessity. Therefore, the matter of destructive competition cannot be considered by the WMATC in the instant matter.

One other thought advanced by D. C. Transit in its Brief at pages 9 and 10 was that the Compact was enacted for the purpose of relieving the traffic congestion created by the millions of tourists who visit Washington yearly. D. C. Transit advances the theory that regulation of carriers could accomplish that. Did D. C. Transit ever determine how those people could be transported with a less number of buses than are used by carriers to transport those people into Washington?

It is fair to say that carriers bringing people to Washington rarely have empty seats in their vehicles, therefore, it would take the same number of

vehicles to transport those passengers on sightseeing trips, as it did to bring them into Washington regardless of whose vehicles were used.

It also should be remembered that sightseeing is conducted during off-peak hours and not during the commuter rush hours.

CONCLUSION

It is urged respectfully that the WMATC does not have jurisdiction over interstate, charter, or special services provided by carriers, pursuant to Certificates issued by the Interstate Commerce Commission.

Congress, in enacting the Compact, never intended that those services being provided by carriers operating pursuant to Interstate Commerce Commission authority would be covered by the Compact. The legislative intent and language of the Compact show that Congress wanted to provide a regulated mass transit service for daily regular-route commutation in the Washington, D.C. Metropolitan Area under the jurisdiction of one regulatory agency, rather than three or four agencies.

It is urged respectfully that for the reasons stated in this Reply Brief, the Complaint should be

dismissed on the ground that the WMATC lacks jurisdiction over the services being provided by Public Service.

Respectfully submitted,

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By:

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THOMAS J. McCLUSKEY

Dated: October 5, 1967.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply Brief of Respondent, Public Service Coordinated Transport, upon Manuel J. Davis, Esq., and Samuel M. Langerman, Esq., Attorneys for D. C. Transit System, Inc., 3600 M Street, N.W., Washington, D.C., and Robert J. Corber, Esq., Attorney for National Association of Motor Bus Owners, 1250 Connecticut Avenue, N.W., Washington, D.C., 20036, by mailing a copy thereof by first-class mail, postage prepaid.

Dated at Maplewood, New Jersey, this 5th day of October, 1967.

RICHARD FRYLING,
Attorney for Public Service
Coordinated Transport

By:

(sgd.) Thomas J. McCluskey
THOMAS J. McCLUSKEY

APPENDIX 'J'

Before The
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In The Matter Of:

D. C. TRANSIT SYSTEM, INC.,)

Complainant)

vs.)

PUBLIC SERVICE COORDINATED)
TRANSPORT,)

Respondent)

Formal Complaint No. 17

REPLY BRIEF FOR COMPLAINANT

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ARGUMENT

In view of the substance of the responsive briefs filed by Public Service Coordinated Transport ("PSC") and the National Association of Motor Bus Owners ("NAMBO"), D. C. Transit System, Inc. ("DCT") believes a general observation of a prefatory nature is warranted. The two briefs, which are largely similar in content, contain repeated references to decisions of the Interstate Commerce Commission ("ICC") and the Courts interpreting and applying the provisions of the Interstate Commerce Act. Particular emphasis has been given to the overriding or predominant nature of this Act and the ICC's regulations thereunder in conflicts with local ordinances and regulations. DCT respectfully submits that all such references are irrelevant to the fundamental issue presented herein.

This issue, stated simply, is whether the provisions of the Washington Metropolitan Area Transit Regulation Compact ("Compact") are applicable to local sightseeing operations conducted by PSC in connection with a charter movement beginning and ending at Linden, New Jersey. The determination of this issue requires a construction not of the Interstate Commerce Act but of the Federal law, Act of September 15, 1960, 74 Stat. 1031 ("consent legislation"), approving the Compact and suspending the applicability of

any other Federal laws inconsistent therewith or in duplication thereof. Moreover, such determination in no way entails the resolving of a conflict between Federal and local laws - only Federal law is involved herein.

In order to respond as fully as possible to the various contentions made by PSC and NAMBO this brief will treat each such contention serially.

On pages 6 through 8 PSC maintains that the Congress in enacting the Compact was concerned only with "mass transit" and regular-route operations and, therefore, never gave the Washington Metropolitan Area Transit Commission ("WMATC") jurisdiction over charter or special services. PSC points to the repeated references in the consent legislation to the words "mass transit" which it defines to mean the "movement of great numbers of passengers on a daily basis within a congested area to and from places of employment. In effect PSC equates "mass transit" with "commuter service".

PSC's argument is fallacious for several reasons. First, from a strictly semantic standpoint, the following definitions are taken from Websters New International Dictionary, Second Edition, Unabridged:

"mass" - "Of, pert. to, or characteristic of a mass or the masses (see 3d MASS, 6)"

"3d MASS, 6" - "With the, the general body of mankind, a race, a nation, etc.;

pl., the great body of the people,
as contrasted with the classes;
the populace"

"transit" - "act or process of causing to
pass; conveyance; carriage"

"commuter" - "one who travels back and
forth between a city and an out-
side residence"

From the foregoing it would seem to be reasonably clear
that the words "mass transit" and "commuter" cannot be equated.

Secondly, the language of the consent legislation
refers to "transit" generally as well as to "mass transit".
In the fourth "whereas" clause of the preamble to the consent
legislation the Congress set forth the purpose of the Compact
as follows:

the establishment of a single organi-
zation as the common agency of the
signatories to regulate transit and
alleviate traffic congestion.
[Emphasis added]

Numerous references to "transit" generally are also found in
the legislative history. See, for example, pages 5 through
7 of House Report No. 1621 of the 86th Congress accompanying
H.J. Res. 402 (May 18, 1960). Certainly, all these references
to the word "transit" without modification suggest that the
Congress was concerned with public transportation generally
and not just the "commuter" aspect thereof.

Thirdly, the word "mass transit" does not appear
anywhere in the language of the Compact. Almost all references

are to "transit" generally, as, for example, in Articles II, V, and X. Furthermore, in describing the operations specifically intended to be covered by the Compact, Section 1(a) of Article XII refers very broadly to "transportation" and not anything more restrictive such as "commuter" or "mass transit".

Fourthly, the WMATC has always asserted regulatory authority over operations that are non-commuter and irregular route in nature. The "grandfather" certificates of public convenience and necessity that WMATC issued to Blue Lines, Inc., the Gray Line, Washington Sightseeing Tours, Inc., and White House Corporation, to name a few, authorized either charter or special operations.

Lastly, and most significantly, the courts have consistently recognized the authority which the Compact has conferred to WMATC to regulate special and charter operations. The following decisions, cited on page 9 of DCT's opening brief, affirm such authority:

Alexandria, Barcroft & Wash. T. Co. v. Washington
M.A.T. Com'n, 323 F2d 777 (1963); Gadd v. Washington
Metropolitan Area Transit Com'n., 347 F2d 791 (1965);
Holiday Tours, Inc. v. Washington Met. Area Trans.
Com'n., 352 F2d 672 (1965); and D. C. Transit
System, Inc. v. Washington Met. Area Trans. Com'n.,

366 F2d 542 (1966).

Interestingly enough, in passing, this same argument advanced by PSC respecting the limitation of the WMATC's jurisdiction to "commuter" operations was only recently contested by the WMATC itself in the United States Court of Appeals for the District of Columbia in Washington Metropolitan Area Transit Commission, et al. v. Universal Interpretive Shuttle Corporation. In a decision of June 30, 1967 in Cases Nos. 20,975 - 20,978, petition for rehearing en banc denied, October 3, 1967, the Court, reversing a ruling of the U. S. District Court for the District of Columbia, held that the proposed sightseeing operation required certification by the WMATC.

PSC next asserts on pages 9 and 10 that even if the Compact generally was intended to apply to non-commuter operations, Section 1(a)(4) of Article XII thereof would in effect except its operations from WMATC's jurisdiction. PSC alleges that although the reference in Section 1(a)(4) is to "regular route" operations only, incidental charter operations performed under Section 208(c) of the Interstate Commerce Act are also intended to be embraced thereby since, under ICC decisions, incidental charter rights are integrally related to and not severable from the underlying regular-route rights. Such argument totally ignores the reasonably clear language of

Section 1(a)(4) as well as the legislative history thereof.

Beginning with the actual language of Section 1(a)(4), there is absolutely no suggestion that such incidental charter operations are to be excepted from WMATC's jurisdiction. Twice Section 1(a)(4) specifically describes the operations covered thereunder as "regular route" in nature. Is there any reason to doubt that the Congress had a specific purpose in mind in employing such specific references? If the Congress wanted to include irregular-route operations within the scope of the exception to WMATC jurisdiction, would it not surely have used language to the effect "transportation performed in the course of an operation over a route" or "transportation performed in the course of an operation over a route, regular or irregular,"?

Whether defined in a technical or non-technical manner the word "regular" clearly restricts the type of operation permitted without WMATC certification. Websters New International Dictionary, Second Edition, Unabridged, defines the adjective "regular" as follows:

"Steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variation; returning or recurring at stated or fixed times or uniform intervals;" [Emphasis added]

The emphasis here is on an operation over a given course and on fixed intervals. Furthermore, as noted by the WMATC in the technical definition of a regular-route operation stated in its Regulation 51-04:

The term 'Regular Route Operation' means scheduled service over designated streets and highways between fixed termini... [Emphasis added]

In short the definition of "regular Route" clearly does not describe an incidental charter operation which is not limited to fixed termini, which does not run at stated or scheduled times, and which does not follow a designated or prescribed course.

In view of the obvious meaning of Section 1(a)(4) it really is not necessary to look at the legislative history thereof to refute PSC's argument. However, since PSC, without any elaboration, states on page 10 that the Congressional intent was to exclude from the Compact an interstate operation commencing and ending outside the Metropolitan District although extending to the Metropolitan District, it may be helpful to consider the legislative history of Section 1(a)(4). In this connection, at the risk of repetition but for the sake of emphasis, much of the substance of Transit's opening Brief, pages 6-8, will be incorporated below.

The legislative history of Section 1(a)(4) really begins with the December 1955 report prepared by Mr. Jerome M. Alper entitled "Transit Regulations for the Metropolitan Area of Washington". The significance of this report was highlighted in the following terms by the Project Director of

the Mass Transportation Survey authorized by the Second Supplemental Appropriations Act of 1955, 69 Stat. 28, 33:^{1/}

The survey has been one of the most comprehensive urban transportation studies yet undertaken in this country. It required 4 years' effort by some of the country's leading planning experts...Two reports of the survey are of special significance to this committee, namely the final report of the Commission and council, and the report by our consultant, Mr. Jerome M. Alper, entitled "Transit Regulations for the Metropolitan Area of Washington".^{2/}

It is only necessary to compare the recommendations of this report^{3/} with the provisions of the Compact to realize that the former is the genesis of the latter.

Mr. Alper's report clearly indicates an intention to have the WMATC regulate the local operations of interstate carriers. Page 36 of the report contains the following statement:

This commission would have exclusive jurisdiction over the movement of passengers

^{1/} The Second Supplemental Appropriations Act of 1955 authorized the National Capital Planning Commission and the National Capital Regional Planning Council to conduct a joint survey of the present and future mass transportation needs of the National Capital Region. This survey was submitted to the President on July 1, 1959.

^{2/} Testimony of Robert A. Keith, found on page 108 of Hearings Before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, 86th Congress, First Session on H. J. Res. 402, Part 1, August 26, 1959.

^{3/} Mr. Alper's report is reproduced in full on pages 43-101 of the transcript of the hearings cited in footnote 2.

for a charge between any points in the district by motor carrier or street railway. Both contract and common carriers performing such transportation would also be subject to the jurisdiction of the compact commission. No exemption would be afforded any motor carrier by virtue of the fact that the transportation performed within the district is performed in the course of an operation over a route, the major portion of which is outside the district, and the carrier performing such transportation is subject to the jurisdiction of the Interstate Commerce Commission or any other agency of the federal government having jurisdiction over interstate commerce. Sightseeing or charter service within the metropolitan district performed by a carrier engaged in transportation subject to the compact law would also be subject to the jurisdiction of the compact commission. School buses and motor carriers operated by the federal government, the signatory States, or any political subdivision thereof, and any transportation by water would be exempt from the jurisdiction of the compact commission. Taxicabs would be subject to the jurisdiction of the compact commission only for interstate rate-making purposes. [Emphasis added]

Comparing this statement with the provisions of Section 1(a) as set forth in H. J. Res. 402 of the 86th Congress and as enacted, it is readily seen that the drafters of the Compact accepted almost all of Mr. Alper's recommendations regarding the WMATC's jurisdiction. Such jurisdiction is exclusive; it covers contract as well as common carriers; it extends to sightseeing or charter service as well as regular-route service; it excludes trans-

portation by water, by the Federal Government, by the signatory states and their political subdivisions as well as transportation for school children. Even Mr. Alper's recommendations about taxicabs are incorporated into Section 1(c).

The only substantial difference between Mr. Alper's report and the language of the Compact arose in connection with the treatment of interstate operations extending to the Metropolitan District. Mr. Alper would not have created any exemption for such operations. Section 1(a), however, provided a limited exemption therefor. Such limited exemption was described as follows:

(4) transportation performed in the course of an operation over a regular route, the major portion of which is outside the Metropolitan District except where a major portion of the passenger traffic begins and ends within the Metropolitan District.

Can there be any doubt that the exemption created by the foregoing language applied only to regular route operations? Can there be any doubt that the clause "except where a major portion of the passenger traffic begins and ends within the Metropolitan District" had no application to an interstate charter movement?

The comments of the I.C.C., the agency most interested in Section 1(a)(4), reveal that the problems created by this Section dealt with questions of which regular routes were covered and not with questions of whether irregular routes were

covered. See the letter of September 16, 1959 from the Commission's Committee on Legislation to Chairman Celler of the House Judiciary Committee, pages 38-40 and 50-51 of House Report No. 1621 of the 86th Congress, *supra*. Moreover, as expressed therein, the language which the I.C.C. suggested as a substitute for Section 1(a)(4) retained the reference to regular-route operations.

As amended in accordance with Section 5 of the consent legislation, 74 Stat. 1051, Section 1(a)(4) still used the words "regular route" to delimit the confines of the exemption provided thereunder. Additionally, other modifying language was added as follows:

...if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission.

Such specific emphasis on "certificated" rights is further evidence of the Congressional intent to exclude the type of "non-certificated" charter operations at issue herein from the benefits of Section 1(a)(4).

In short, then, the legislative history of Section 1(a)(4) contains nothing to support, and in fact completely negates, the contention of PSC that its incidental charter operations were intended to be exempted from WMATC's jurisdiction.

PSC next argues, on pages 10 and 11, that even if the Compact from a general standpoint applied to the movement in issue, Section 20(a)(2) would become operative and, in effect, would authorize such movement to be conducted without certification from the WMATC. As will be fully discussed below, Section 20(a)(2) does not apply to carriers such as PSC.

Section 20(a)(2) reads as follows:

Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act.

This Section is really two separate provisions. First it provides that the suspension of any certificated authority issued by the ICC to a carrier subject to the WMATC's jurisdiction will last only during the life of the Compact. Such provision must be interpreted in the light of Section 3 of the consent legislation and Articles VIII and IX(3) of the Compact under which the applicability of the laws of

the United States, including the Interstate Commerce Act, are suspended for the duration of the Compact" to the extent that such laws are inconsistent with or in duplication of, the jurisdiction of the [WMATC] or any provision of the [Compact]". In other words, it is reasonably clear that not all ICC certificates are suspended but only those inconsistent with or duplicative of WMATC's jurisdiction. Such inconsistency or duplication obviously can arise only when an ICC certificate authorizes operations within the Metropolitan District which are subject to regulation by the WMATC.

How does this apply to PSC? PSC, as noted in the stipulation of facts (Appendix "A" to DCT's opening brief) holds ICC certificates which authorize regular-route service between points in New Jersey and points in New York, Pennsylvania, or Delaware. Certainly none of PSC's regular-route certificates is inconsistent with or duplicative of WMATC's jurisdiction and, therefore, none of such certificates has been suspended.^{4/}

^{4/} While PSC also holds ICC certificates authorizing special operations from points in New Jersey and Pennsylvania to many points in the United States, including the District of Columbia, the significance of the resulting suspension of those portions of such certificates inconsistent with or duplicative of WMATC's jurisdiction is nil because of the language of the second provision of Section 20(a)(2), discussed next hereinabove, which clearly restricts the benefits of Section 20(a)(2) to holders of suspended regular-route certificates.

The second provision of Section 20(a)(2) preserves the incidental or noncertificated special and charter rights which the holders of I.C.C. regular-route certificates obtained in accordance with Section 208(c) of the Interstate Commerce Act, 49 U.S.C. 308(c), and the regulations promulgated thereunder by the I.C.C. These incidental rights, as described in Regulations Special or Chartered Party Service, 29 M.C.C. 25 (1939), from which PSC quotes on page 9 of its brief, are deemed to be integrally related to and not severable from a carrier's regular-route, certificated rights. Accordingly, as noted by the I.C.C. in commenting on Section 20(a)(2), "[w]ithout some such provision the suspension of the I.C.C. certificate might be deemed to suspend also the special and charter rights".^{5/}

How does this apply to PSC? Since PSC does not hold any I.C.C. regular-route certificate suspended in accordance with the first provision of Section 20(a)(2), it cannot hold any incidental rights preserved in accordance with the second provision of Section 20(a)(2). Phrased differently, Section 20(a)(2) applies only to carriers whose I.C.C. regular-route certificates have been suspended because they were inconsistent with or in duplication of the WMATC's jurisdiction, and PSC is not such a carrier. Consequently, PSC is not authorized by

^{5/} Page 43 of House Report No. 1621 of the 86th Congress, supra.

Section 20(a)(2) to conduct the operations under review herein.

In passing, PSC makes two observations on page 11 regarding DCT's interpretation of Section 20(a)(2). First, it characterizes as "wholly unwarranted" DCT's statement in its opening brief, page 12, that Section 20(a)(2) benefited only local carriers whose regular route operations in the Metropolitan District are subject to the WMATC's jurisdiction. As a practical matter, what other carriers can benefit therefrom? A carrier operating under an I.C.C. regular-route certificate authorizing service between a point within the Metropolitan District and a point outside the Metropolitan District is, under Section 1(a)(4), excepted from WMATC's jurisdiction. Therefore, its I.C.C. certificate is not suspended and Section 20(a)(2) is not applicable. A carrier operating under an I.C.C. certificate authorizing service in special or charter operations between a point within the Metropolitan District and a point outside the Metropolitan District is, under Section 1(a), subject to WMATC's jurisdiction to the extent such operations are conducted within the Metropolitan District. Therefore, its I.C.C. certificate is suspended to the extent that such certificate, by authorizing the local operation, is inconsistent with or duplicative of such jurisdiction. However, such suspension does not result in any preservation of incidental rights under

Section 20(a)(2) because such rights are associated only with certificated regular-route rights. In effect, then, Section 20(a)(2) can apply only to local carriers whose I.C.C. regular route certificates have been suspended because the operations authorized therein are subject to the WMATC's jurisdiction.

PSC's second observation is that DCT's interpretation of Section 20(a)(2) would produce an "unjustly discriminatory" result because local carriers would be allowed to transport chartered parties to any of the States but carriers from such States would not be allowed to transport chartered parties into the Metropolitan District for sightseeing purposes. What PSC has overlooked is the fact that local carriers cannot transport chartered parties within the Metropolitan District for sightseeing purposes without authority from the WMATC. Accordingly, it is only if DCT's argument that all sightseeing operations performed within the Metropolitan District, whether by local or out-of-state carrier, require certification by the WMATC is denied that any unjust discrimination will result - and such discrimination will operate against local carriers only.

On pages 12 and 13 PSC argues that the WMATC has already decided the issue in this proceeding by Orders Nos. 311 and 366, served September 20, 1963, and June 17, 1964, respectively. These orders disposed of applications filed by four carriers seeking "grandfather certificates" under Section 4(a) of Article XII of the Compact.

A most casual reading of Order No. 366 indicates that the WMATC never intended its decision therein to be conclusive in nature. First, in finding that the involved transportation was covered by the Section 1(a)(4) exception to its jurisdiction, WMATC merely stated that such "appears" to be the case, not very positive language. Secondly, reflecting apparent doubts about its decision, the WMATC dismissed the applications without prejudice to a reprosecution thereof "in the event a subsequent determination is made that the transportation for which authority is sought comes within the jurisdiction of the Commission". Surely, the WMATC in Order No. 366 was leaving the door wide open for further consideration of the application of Section 1(a)(4) as that initiated by DCT's complaint herein.

Moreover, it would appear that the issues raised in these two proceedings can be distinguished if necessary. The "grandfather applications" dismissed by Order No. 366 were filed by four carriers holding I.C.C. regular-route certificates authorizing operations between points within the Metropolitan District and points outside the Metropolitan District. Section 1(a)(4) clearly excepted such regular-route operations from WMATC's jurisdiction, and the WMATC apparently further found, although DCT disagrees, that incidental operations connected therewith were also excepted from its jurisdiction. PSC, however, holds no I.C.C. regular-route certificate authorizing

operations within the Metropolitan District. The issue here, then, is entirely different from that previously raised; namely, whether Section 1(a)(4) excepts from WMATC's jurisdiction charter operations conducted as an incident to regular-route certificates which do not authorize operations within the Metropolitan District.

On pages 13-17 PSC discusses two Supreme Court cases which it maintains are relevant to the instant dispute. It is respectfully submitted that no such relevancy exists.

The two cases, City of Chicago v. Atchison, T. & S. F. Ry. Co., 357 U.S. 77 (1958) and Railroad Transfer Service v. City of Chicago et al., 18 L.ed 2d 143, 87 S.Ct. 1095 (March 27, 1967), involved conflicts between Federal law (the Interstate Commerce Act) and local ordinances. No such conflict is involved herein. Moreover, as noted at the outset of this brief, the question presented by this proceeding involves the interpretation and application of a single law - an Act of Congress approving an interstate compact and suspending all Federal laws, including the Interstate Commerce Act, inconsistent therewith or in duplication thereof. No such compact or consent legislation was involved in the two Chicago cases. Under the circumstances, this is truly a case of first impression.

On pages 18 and 19 PSC makes several statements that warrant passing reference. First PSC asserts that the matter

of the destructive competition which results between the sightseeing operations of local carriers noncertificated by the WMATC and the similar operations of uncertificated out-of-State carriers cannot be considered in the determination of this proceeding. To the extent that such competition constitutes a debilitation of the comprehensive scheme of regulation envisioned by the drafters of the Compact, it would seem to be a most appropriate matter for consideration in the involved determination of the jurisdictional limitations of the Compact. Moreover, such consideration would be entirely consistent with the following mandate in Article XI of the Compact:

In accordance with the ordinary rules for construction of interstate compacts, this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof.

As stated in Piedmont & Northern Ry. v. Commission, 286 U.S. 299, 311, "The Act is remedial and to be construed liberally".

Finally, PSC scoffs at the thought that the Compact was intended to relieve the type of traffic congestion created by the millions of visitors coming to Washington yearly. It suggests that regulation of the out-of-State carriers transporting these visitors in and about Washington would in no way reduce such congestion, since the same number of vehicles would be required for the local sightseeing trips as were required for the over-the-road trips.

Can there be any doubt that the WMATC was created to alleviate the traffic congestion in the Metropolitan District? A mere glimpse at Articles II, V, and X of the Compact should dispel any such doubts. Article II provides:

The Commission shall have jurisdiction co-extensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion... [Emphasis added]

Article V creates a Traffic and Highway Board to, among other things, "continuously study means and methods of shortening transit travel time". Article X represents a pledge by the signatories to cooperate "in the solution and control of transit and traffic problems within the Metropolitan District".

Concern over traffic congestion in the Metropolitan District was also apparent in the Congressional debates on H.J. Res. 402. Congressman Cramer, for example, made the following observation:

Mr. Chairman, the Metropolitan Washington area has experienced a rapid growth in the postwar years. According to the hearings, the greatest part of this expansion has been in the suburban areas of nearby Virginia and Maryland. The increase in the number of automobiles has been even at a greater rate. It is estimated that the number of automobiles in the metropolitan area doubled in the 7-year period between 1948 and 1955. Forecasts indicate a population increase to an estimated 2,400,000 by 1965 and 3 million by 1980. This projected growth, superimposed upon the present congestion of traffic clearly

demonstrates the need for a control which will cross State lines and bring Greater Metropolitan Washington under one regulatory agency. 6/ [Emphasis added]

While unquestionably the primary source of this traffic congestion, which is becoming increasingly prevalent during the non-rush hours, is the private automobile, the constant sightseeing operations of hundreds of out-of-State carriers, particularly within the limited confines of the Mall area, contribute significantly to such congestion during the non-rush hours. PSC asks how regulation of such carriers will alleviate the congestion. The answer is simple; regulation will reduce the number of sightseeing vehicles operating over the city streets without reducing the number of passengers involved.

To illustrate, most of the out-of-State carriers performing local sightseeing services employ buses with 38 or 41 seats. Local carriers such as DCT employ buses with 51 seats for such sightseeing services. Therefore, three local buses could accommodate the visitors brought to the Capital by four out-of-State buses with 38 seats, and four local buses could accommodate the visitors brought by five out-of-State buses with 41 seats. Such substitution would result in a 20 to 25 percent reduction in the number of buses operating daily in local sightseeing

6/ See Congressional Record, 86th Congress, 2nd Session, Volume 106, Part 9, p. 11739.

service. It seems quite clear that the desired regulation could not help but alleviate traffic congestion in the Metropolitan District.

Turning now to those contentions in the NAMBO brief which have not already been discussed hereinabove, NAMBO states on page 9 with respect to Section 1(a)(4):

Thus, interstate rights for charters under the Interstate Commerce Act are legally an inseparable part of regular route authority. It would be anomalous indeed for the framers of the Compact to exclude one from coverage without excluding the other -- to make separable that which the Commission and the Congress have always considered inseverable.

There is no such anomaly; for NAMBO has overlooked a fundamental distinction between the Interstate Commerce Act and the Compact. The Compact contains no provision for incidental rights. Accordingly, the framers of the Compact were particularly careful in drafting Section 1(a)(4) to avoid any confusion that might otherwise arise as to the inclusion of such incidental rights within the exclusion provided therein. Section 1(a)(4) specifically refers to "transportation performed in the course of an operation over a regular route between a point in the Metropolitan District and a point outside the Metropolitan District...if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission" [emphasis added]. Would not the framers

if they had a contrary intent simply have said "operation between a point in the Metropolitan District and a point outside the Metropolitan District if authorized by the Interstate Commerce Commission"? By the language employed the framers made their intention clear that only certain certificated operations were to be excluded from WMATC's jurisdiction.

The mere use of the word "permit" rules out an intent to include incidental rights within the exclusion, as holders of such permits have no such rights under the Interstate Commerce Act. Moreover, the very separate and special treatment of incidental rights in Section 20(a)(2) is also evidence of an intent on the part of the framers to limit the exemption in Section 1(a)(4) to certificated rights.

The WMATC has previously recognized the distinction between the Interstate Commerce Act and the Compact with respect to the matter of incidental rights. In Order No. 553, served December 23, 1965, in D. C. Transit System, Inc. v. Atwood's Transport Lines, Inc., Docket No. 82, the Commission said:

This Commission's statutory law as set forth in the Washington Metropolitan Area Transit Regulation Compact ("Compact"), contains no language comparable to the Interstate Commerce Act. The Compact does not confer any so-called incidental charter or special operating rights upon the holder of regular route authority. This view has been consistently recognized by this Commission. See Order No. 186, issued August 16, 1962, Application of D. C. Transit for Certificate of Public Con-

venience and Necessity (p. 5, finding 5):
Order No. 215, issued November 2, 1962,
Application of W. V. & M. Coach Company
(p. 3); Order No. 251, issued April 25,
1963, Application ("Grandfather") of
Airport Transport, Inc.

Order No. 553 was sustained by the United States Court of Appeals for the Fourth Circuit in D. C. Transit System, Inc. v. Washington Met. Area Tran. Com'n., 366 F2d 542 (1966).

On page 10 NAMBO quotes two statements made in House Report No. 1621 of the 86th Congress, supra, as illustrating the Congressional intent underlying Section 1(a)(4). NAMBO has underscored portions of these statements indicating that the WMATC would have jurisdiction only over transportation performed "solely" within the Metropolitan District and that the I.C.C. would have "jurisdiction over transportation crossing the metropolitan district boundaries".

Taken alone, the underscored language does suggest a Congressional intent to exclude from the WMATC's jurisdiction any operations commencing and terminating outside the Metropolitan District. Taken in context, however, it is reasonably clear that such language was intended to apply only to certain regular-route operations and was not intended to apply to the irregular-route operations in issue.

To illustrate, as stated in H.J. Res. 402, and as enacted, Section 1(a)(4) read:

...transportation performed in the course of an operation over a regular route, the major portion of which is outside the Metropolitan District except where a major portion of the passenger traffic begins and ends within the Metropolitan District. [Emphasis added]

This language gave the I.C.C. a problem which was described on page 21 of House Report No. 1621 as follows:

The principal problem raised by the Interstate Commerce Commission in its report on the legislation dated September 16, 1959, related to the precise demarcation of jurisdiction between the Washington Metropolitan Area Transit Commission and the Interstate Commerce Commission. This problem arises under section 1(a)(4) of article XII in connection with what is believed to be a rather insignificant amount of service rendered within the metropolitan district by carriers operating from outside of the metropolitan district. The Interstate Commerce Commission took the position that the jurisdictional determinants in the referenced section of the compact were not sufficiently precise and that the provision may result in the exercise of jurisdiction by both the Metropolitan Area Transit Commission and the Interstate Commerce Commission over some carriers rendering service within the metropolitan district from points outside the metropolitan district. Concern was expressed primarily with regard to the creation of dual jurisdiction over long-line carriers which may operate within the metropolitan district as part of a regular route interstate operation over such matters as issuance of securities and unification with other carriers. [Emphasis added]

As a consequence of I.C.C.'s problem, the House Judiciary Committee recommended that Section 1(a)(4) ultimately

be amended by the signatories to read as follows:

(4) transportation performed in the course of an operation over a regular route between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission as to interstate and foreign commerce, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the compact. [Emphasis added]

The comments of the House Judiciary Committee with respect to such amendment were summarized in three sentences on page 22 of House Report No. 1621, but only the last sentence thereof is quoted on page 10 of NAMBO's brief. Such comments were as follows:

...Under this amendment, jurisdiction over transportation within the metropolitan district, performed in the course of an operation over a regular route between a point in the metropolitan district and a point outside the metropolitan district, shall remain under the jurisdiction of the Interstate Commerce Commission. Any carrier whose only transportation within the metropolitan district falls within the described category shall not be deemed to be a carrier subject to the compact. The effect of this amendment from the standpoint of division of jurisdiction is to treat the metropolitan district as a State with the consequence that the Washington Metropolitan Area Transit Commission would have jurisdiction over purely intrametropolitan district transportation and the Interstate Commerce Commission would have jurisdiction over transportation crossing the metropolitan district boundaries. [Emphasis added]

It would seem to be quite clear from the foregoing four quotations that both the I.C.C. and the House Judiciary Committee in seeking an amendment to Section 1(a)(4) were concerned only with regular-route operations. Each quote specifically refers to regular-route operations and no others. Is it not reasonable to assume that if either the I.C.C. or the House Judiciary Committee desired to have irregular-route special and charter operations embraced within the scope of the exemption in Section 1(a)(4), they would have said something to that effect? At no point in the legislative history of H.J. Res. 402 did anyone suggest that the words "over a regular route" be deleted from Section 1(a)(4) so as to broaden the scope of the operations being exempted from WMATC's jurisdiction. In the final analysis these four words speak well for themselves.

On page 14 NAMBO asserts that the report of the hearing examiner, served March 20, 1967, in D. C. Transit System, Inc. v. Atwood's Transport Lines, Inc., No. MC-C-5263, is applicable to this proceeding. It is respectfully submitted that such report has no relevancy to the issue presented herein.

This Atwood's case involved a carrier which, prior to the Compact, held an I.C.C. certificate authorizing a regular-route operation between Washington, D. C. and Germantown, Maryland, the site of the Atomic Energy Commission. This certificate of course carried with it the Section 208(c) incidental authority

to operate between points on such regular-route and points throughout the United States. As its entire regular-route operation was confined to the Metropolitan District, the carrier's I.C.C. certificate was suspended when the Compact came into existence, and in place thereof the carrier was issued a "grandfather" certificate by the WMATC authorizing the same regular-route operation between Washington and Germantown. This "grandfather" certificate was subsequently suspended by the WMATC. Thereafter the carrier continued to perform charter service from points in the Metropolitan District on the regular-route authorized by the suspended "grandfather" certificate to points outside the Metropolitan District.

The issue raised in the Atwood's case was whether the carrier had authority to continue such charter service in view of the suspension of its WMATC "grandfather" certificate. DCT, the complainant, argued that the carrier had no such authority and asked the I.C.C. to issue a cease and desist order. The carrier in turn moved that the complaint of DCT be dismissed since the involved operation, under Section 20(a)(2) of the Compact, was no longer subject to the jurisdiction of the I.C.C. The hearing examiner denied such motion, holding that Section 20(a)(2) of the Compact did not remove the jurisdiction of the I.C.C. over an interstate charter operation

from a point within the Metropolitan District to a point outside the Metropolitan District.

DCT fully supports the examiner's decision in the Atwood's case. Such decision, however, clearly cannot be twisted around, as proposed by NAMBO, to support the proposition that Section 20(a)(2) of the Compact precludes the WMATC's assertion of jurisdiction, under Section 1(a), over sightseeing operations performed within the Metropolitan District in connection with an incidental charter operation commencing and ending outside the Metropolitan District. Stated differently, the fact that the WMATC, under Section 20(a)(2), has no jurisdiction over an interstate charter operation from a point within the Metropolitan District to a point outside the Metropolitan District does not mean that the WMATC has no jurisdiction, under Section 1(a), over local sightseeing operations performed as part of an interstate charter operation moving in the reverse direction, that is, from a point outside the Metropolitan District to a point within the Metropolitan District.

The reason that Section 20(a)(2) has an entirely different application in the Atwood's case and this case is quite simple. Atwood's had an I.C.C. regular-route certificate authorizing operations between points within the Metropolitan District. Under Section 20(a)(2) such certificate was suspended but, at the same time, the incidental charter rights associated

therewith and the I.C.C.'s jurisdiction thereover, as to incidental charter operations extending beyond the Metropolitan District, were both preserved. Such preservation of the I.C.C.'s jurisdiction in turn precludes the assertion of WMATC's jurisdiction under Section 1(a). By contrast, PSC holds I.C.C. regular-route certificates which authorize operations completely outside the Metropolitan District. Section 20(a)(2) therefore does not operate to (a) suspend such certificates, (b) to authorize the performance of the involved transportation, and (c) to preclude the WMATC's assertion of jurisdiction under Section 1(a).

On page 16 NAMBO suggests that the Congress in enacting the Compact "separated local from Federal regulation". Quite the contrary, in approving the Compact and suspending all Federal laws inconsistent therewith or in duplication thereof, including the Interstate Commerce Act, the Congress established the predominance of a single law, to be administered by the WMATC, for the regulation of all motor transportation for hire performed within the Metropolitan District, with certain exceptions not applicable herein.

Finally as a last resort on pages 16 and 17 NAMBO conjures up a frightening picture, resulting from DCT's interpretation of the Compact, of innocent carriers caught between the conflicting regulations of the I.C.C. and the WMATC.

PSC points to several areas in which the exercise of dual jurisdiction by the I.C.C. and WMATC would be injurious to the carriers.

Whether or not DCT's position in this proceeding is sustained, there are several areas in which, with the consent of the Congress, the I.C.C. and the WMATC already exercise dual jurisdiction without any real conflicts or confusion. To the extent that carriers such as DCT, operating primarily within the Metropolitan District, occasionally operate beyond the Metropolitan District, they are now subject to regulation, without injury, by both the I.C.C. and WMATC with respect to such items as securities, unifications and acquisitions, insurance, accounting and safety. Moreover, it is quite clear that both the I.C.C. and the WMATC approve of such dual jurisdiction.

In commenting on such dual jurisdiction, the I.C.C. said the following:

It is normally undesirable for a carrier to be subject to more than one regulatory authority in a matter such as the issuance of securities...Under the particular circumstances and in view of the substantial interest of local authorities in the local carriers and services, the Commission is of the opinion that the requirement of dual approval as provided by section 11 is acceptable... Although dual jurisdiction is generally undesirable, it is our opinion that under the present circumstances, both the [I.C.C.] and the [WMATC] should have jurisdiction over

the unification and common control of such carriers... 7/

For its part, the WMATC has recognized the "spirit of comity which should prevail when dual jurisdiction exists", which spirit would "operate to avoid, or ameliorate," the conflicts and confusion over which NAMBO is herein needlessly concerned. 8/

In the final analysis there is absolutely no reason to believe that the WMATC's proper assertion of jurisdiction over PSC's sightseeing operations within the Metropolitan District will cause any new conflicts with the regulations of the I.C.C.

7/ See pages 41-43 of House Report No. 1621, supra. While the I.C.C.'s approval was conditioned upon the adoption of its proposed revision of the language of Section 1(a)(4) of the Compact, the adoption of a different revision thereof was deemed by the I.C.C. to be an acceptable substitute, as noted on pages 51 and 52 of House Report No. 1621.

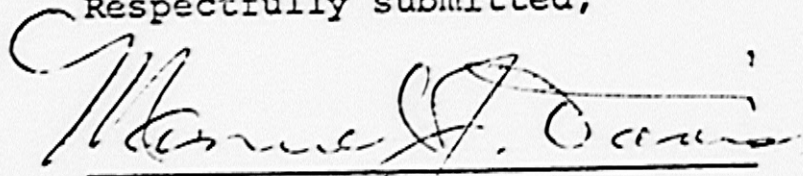
8/ See pages 10 and 11 of WMATC's Reply Brief in Washington Metropolitan Area Transit Commission, et al. v. Universal Interpretive Shuttle Corporation, supra.


CONCLUSION

For all the reasons discussed in DCT's opening brief, as further highlighted herein, DCT respectfully submits that the WMATC's exercise of jurisdiction over the local sightseeing operations of carriers such as PSC is entirely consistent with and required by the dual responsibility the WMATC bears under the Compact, the regulation of transit and the alleviation of traffic congestion, and is a major step in achieving the centralized, uniform control of for-hire transportation by motor vehicle in the Metropolitan District intended by the Congress in approving the Compact.

WHEREFORE, DCT prays that the WMATC compel PSC to desist from engaging in any transportation subject to the Compact until authorized by a certificate of public convenience and necessity.

Respectfully submitted,


Manuel J. Davis


Samuel M. Langerman
3600 M Street, N. W.
Washington, D. C. 20007

Attorneys for D. C.
Transit System, Inc.

APPENDIX 'K'

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 897

IN THE MATTER OF:)	Served December 18, 1968
)	
D. C. TRANSIT SYSTEM, INC.,)	Formal Complaint No. 17
)	
Complainant,)	
v.)	
)	
PUBLIC SERVICE COORDINATED)	
TRANSPORT,)	
Respondent.)	

APPEARANCES:

MANUEL J. DAVIS and SAMUEL LANGERMAN, attorneys for
D. C. Transit System, Inc.

THOMAS J. McCLUSKEY, attorney for Public Service Coordi-
nated Transport.

ROBERT J. CORBER, attorney for National Association of
Motor Bus Owners, Intervenor.

By complaint filed March 3, 1967, D. C. Transit System, Inc., ("Complainant") alleges that Public Service Coordinated Transport ("Respondent") is performing passenger transportation for hire between points in the District of Columbia without a certificate of public convenience and necessity from this Commission as required by Article XII, Section 4 of the Washington Metropolitan Area Transit Regulation Compact. Public Service Coordinated responded and the National Association of Motor Bus Owners ("Intervenor") was granted leave to intervene.

Complainant and respondent stipulated the facts underlying the instant complaint. Briefly, they are as follows: Respondent is a common carrier of passengers operating pursuant to

authority from the Interstate Commerce Commission. In connection with that authority, it holds special operations authority and incidental charter rights. On October 14, 1966, respondent transported a charter party from Linden, New Jersey to the District of Columbia. The party returned via respondent on October 16, 1966. The party had accommodations at a local motel and during the course of their visit were transported by respondent to and from various points of interest within the Washington Metropolitan District. Only members of the charter party were transported on such tours and all such passengers commenced and ended this trip at Linden.

Briefs were filed in this matter and on January 26, 1968, the Commission entertained oral argument.

The basic question presented herein is simply this: Are respondent's local sightseeing operations subject to the jurisdiction of this Commission? Complainant contends that Article XII, Section 1(a)^{1/} of the Compact covers all transportation within the Metropolitan District except that which is part of a regular route operation between a point within and a point (or, perhaps points if interstate or foreign commerce is concerned) without the Metropolitan District. This exemption, complainant asserts, is confined to regular route operations. The services performed by respondent are irregular route, special and charter operations, says complainant; hence, the Compact requires a certificate for this service. Moreover, the legislative history, the need for a uniform system of regulation, and the obligation of the Commission to alleviate traffic problems in the Metropolitan District, according to complainant, support its position. In reply, respondent and intervenor state that the Compact gives the Commission jurisdiction over mass transit only and this does not include charter or special operations; that incidental charter rights have a regular route "personality" rather than irregular; that the congressional intent behind the Compact was not to include the type of operation herein concerned; that by Orders No. 311 and 366, the Commission has previously decided this question holding that such operations are not within its jurisdiction; and finally,

^{1/} "This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except. . . ."

that certain judicial and administrative decisions indicate that the Commission does not have jurisdiction over respondent's operations.

The complaint raises questions both of statutory construction and of fact. Taking up the statutory problem first, the question we must resolve is whether the framers of the Compact intended that groups coming to Washington by charter bus who wish to engage in local sightseeing as a group must make use of a local certificated carrier rather than the charter operator who brought them here. We find nothing whatever in the statutory history of the Compact which indicates such an intent. Indeed, the framers, at least in one regard, took pains to exclude from the Compact's terms operations by carriers from outside the Metropolitan District. See Compact, Article XII, §1(a)(4).

Although this Compact has the force of Federal law, the basic feature envisioned by the framers is one analogous to the creation of a unit comparable to a state.^{2/} This, in fact, was conceded by complainant's counsel (Tr. 6). We are cited to no state or even city, attempting to exert the kind of far reaching authority which complainant would have us assert.

Complainants base their assertions as to our jurisdiction on the broad terms of Article XII, § 1(a) of the Compact, but that section is applicable only if the transportation in question is "between any points in the Metropolitan District." This brings us to the factual question which must be resolved.

Complainant's approach assumes that the trip in question can be broken down into separate parts -- the trip to Washington; the excursion within Washington; the return to New Jersey. We consider this an artificial distinction. In our view, the operation in question constitutes one continuous trip and the excursion within Washington is an integral and inseparable part thereof. Obviously, the mere fact of a stop in Washington does not make any movement of a charter party thereafter a separate and distinct transportation service over which we should assert jurisdiction. So to hold would lead to ridiculous results. Any group passing through the area which makes more than one stop in the Metropolitan District would have to be transferred to a certificated carrier following the first stop.

^{2/} Hearings Before Special Subcommittee of Committee on the Judiciary, U.S. Senate, H.J. Res. 402, 86th Cong., 2d Sess. [June 24, 1960], p. 125.

Nor need we get into hairsplitting distinctions as to when a stop becomes sufficient to invoke our jurisdiction. We think the more important factor is the general nature of the trip. The bus is chartered to bring the riders here as a group, to remain together as a group while they visit the sights of the city, and to return to their home city as a group. The trip is an integral whole and cannot legitimately be split into its component parts for regulatory purposes. For this reason, we find that it does not fall under our jurisdiction over transportation between points in the Metropolitan District.

We are not unmindful of the full implications of the position urged by complainant. It does not simply involve one busload of persons from New Jersey who came to Washington for a visit. There are literally thousands of buses and millions of persons who come here under similar circumstances annually. Acceptance of complainant's position would mean that all those persons would be subjected to the inconvenience and expense of transferring to local carriers for their visits throughout the city while the vehicles that brought them here lay idle. We do not think this was a result that was intended when the Compact was drafted nor would it be tolerated for long if we sought to permit it.

We turn now to several of the other contentions or issues presented by the parties. First of all, Article XII, Section 20(a)(2)^{3/} is not relevant to the situation at hand.

Under the Interstate Commerce Act, a carrier holding regular route authority per a certificate of public convenience and necessity was authorized by statute to transport charter and special operation parties from a point on its regular route to any point in the United States.

^{3/} Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits, issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act.

When the Compact was enacted, carriers domiciled in the Washington Metropolitan District had their I.C.C. certificates suspended. Without a savings clause, the basis for continuing charter and special operations party trips to points outside the Metropolitan District would thus have been eliminated. Section 20(a)(2) is that savings clause; its sole function in the Compact is to permit local carriers to continue interstate charter operations from the Metropolitan District to points outside it. Those operations remain under the jurisdiction of the I.C.C. Since the respondent is not a local carrier subject to our jurisdiction whose I.C.C. certificate was suspended, it is not a carrier falling within the scope of this section.

Secondly, respondent and intervenor contend that due to the fact that incidental charter rights were derived from regular route operations, these rights maintain a regular route personality and as such are exempt -- Article XII, Sec. 1(a)(4). Despite what can be said in respondent's favor, it seems clear that charter operations are irregular route in nature and in fact. To contend otherwise, in our estimation, does violence to established principles of jurisprudence and transportation law.

Several other minor or ancillary issues have been advanced, but do not require comment. What we are holding today is simply that on the record before us -- the pleadings, the oral argument, and the stipulation of facts -- the transportation herein challenged does not fall within the scope of our jurisdiction. The operation which we have evaluated is one continuous round-trip charter operation from and to New Jersey not constituting transportation for hire between points in the Metropolitan District. We will dismiss the complaint of D. C. Transit.

THEREFORE, IT IS ORDERED that Formal Complaint No. 17 filed by D. C. Transit System, Inc., be, and it is hereby, dismissed.

BY DIRECTION OF THE COMMISSION:

Melvin E. Lewis

MELVIN E. LEWIS
Executive Director

APPENDIX 'L'

Before The
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

IN THE MATTER OF:

D. C. TRANSIT SYSTEM, INC.,

Complainant,

vs.

PUBLIC SERVICE COORDINATED
TRANSPORT,

Respondent.

Formal Complaint No. 17

APPLICATION FOR RECONSIDERATION OF ORDER NO. 897

Comes now D. C. Transit System, Inc. ("Transit"),
by and through its attorneys, and respectfully requests re-
consideration of Order No. 897, served on the Complainant
on December 18, 1968, wherein the Washington Metropolitan
Area Transit Commission ("Commission") ruled that the
transportation herein challenged did not fall within the
scope of its jurisdiction, stating as grounds for its request
the following:

1. The Commission erred in failing to find that the transportation challenged by Transit in this proceeding was within the scope of its jurisdiction.
2. The Commission's decision is inconsistent with the intent of Congress in establishing the Washington Metropolitan Area Transit Regulation Compact.
3. The Commission's decision is contrary to the intent of Article XII, Sections 1. (a), 1. (a) (4), and 20 (a) (2) of the Washington Metropolitan Area Transit Regulation Compact.
4. The Commission's decision is contrary to the facts stipulated by the parties to this proceeding.

5. The Commission's decision disregards its obligation set forth in Article II of the Washington Metropolitan Area Transit Regulation Compact.

Although the Commission dismissed Transit's complaint with a single sentence the purported grounds for error demonstrate the vastness of the actual problem at hand. The grounds of error charged are related in many manners and ways and it is difficult to separate the arguments in precise paragraphs. In many cases they will over-lap and be discussed jointly.

I

THE COMMISSION ERRED IN FAILING TO FIND
THAT THE TRANSPORTATION CHALLENGED BY
D. C. TRANSIT IN THIS PROCEEDING WAS
WITHIN THE SCOPE OF ITS JURISDICTION

Every brief writer, every petitioner, and every lawyer looks for the comparison, the case in point, the precedent, the before situation. However, there is only one Washington, D. C. in the United States. It cannot be compared to any other body; legislative, judicial or executive. Washington, D. C. is a child of Congress and has never been weaned by its mother. The Washington Metropolitan Area Transit Commission was created to help care for this child and the surrounding area which had become its playground. Let us not compare the Metropolitan Region or the Washington Metropolitan Area Transit Commission with States or their regulatory bodies. No matter how you look at the problem the situation is always

the same. This is the Federal Government and the problems and solutions are unique. It is true that a State cannot interfere with the movement of interstate commerce which is regulated by the Interstate Commerce Commission. However in the instant proceeding the regulatory body (Washington Metropolitan Area Transit Commission) is not interfering with the Interstate Commerce Commission - it is the equal of the Interstate Commerce Commission. Congress created the Commission with full authority to regulate the transportation of people for hire in its own created city and one cannot read between the lines in an effort to avoid this responsibility. As hereinafter stated, the Compact imposes the obligation on the Commission to regulate the transportation in question in this proceeding, and the Commission erred in failing to assume this responsibility.

II

THE COMMISSION'S DECISION IS INCONSISTENT WITH THE INTENT OF CONGRESS IN ESTABLISHING THE WASHINGTON METROPOLITAN AREA TRANSIT REGULATION COMPACT

Notwithstanding the Commission's determination hereinabove stated, Transit herein below sets forth that portion of the statutory history of the Compact which relates to the said subject matter and definitely proves that it was the intent of the framers of the Compact to place jurisdiction in this Commission over local sightseeing services within the Metropolitan District that were part of a movement of passengers originating at a point beyond the Metropolitan District.

Reproduced on Pages 43-101 of the hearings Before Sub-Committee No. 3 of the Committee on the Judiciary, House of Representatives, 86th Congress, First Session of H.J. Res. 402, Part I, August 26, 1959, is a report covering the investigation and testimony relating to the Compact which, in substance, reveals that the drafters of the Compact intended to have the Washington Metropolitan Area Transit Commission regulate the operations of the nature involved in this proceeding. The special significance of this report is noted on Page 108; and the language therefrom hereinafter quoted is found on Page 81. The said report sets forth:

This commission would have exclusive jurisdiction over the movement of passengers for a charge between any points in the district by motor carrier or street railway. Both contract and common carriers performing such transportation would also be subject to the jurisdiction of the compact commission. No exemption would be afforded any motor carrier by virtue of the fact that the transportation performed within the district is performed in the course of an operation over a route, the major portion of which is outside of the district, and the carrier performing such transportation is subject to the jurisdiction of the Interstate Commerce Commission or any other agency of the federal government having jurisdiction over interstate commerce. Sightseeing or charter service within the metropolitan district performed by a carrier engaged in transportation subject to the compact law would also be subject to the jurisdiction of the compact commission. School buses and motor carriers operated by the federal government, the signatory States, or any political subdivision thereof, and any transportation by water would be exempt from the jurisdiction of the compact commission. Taxicabs would be subject to the jurisdiction of the compact commission only for interstate rate-making purposes. [Emphasis added]

The broad nature of the Commission's jurisdiction contemplated by Mr. Alper was incorporated into Section 1 (a) of Article XII of the Compact as set forth in H.J. Res. 402 of the 86th Congress. With respect to operations within the Metropolitan District integrally related to operations outside thereof, the language of the Compact differed from Mr. Alper's thinking. Whereas Mr. Alper would have subjected all such operations to the Commission's jurisdiction, Section 1(a) (4), as enacted, provided a limited exemption therefor ^{1/} in the following terms:

This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District...except -

(4) transportation performed in the course of an operation over a regular route, the major portion of which is outside the Metropolitan District except where a major portion of the passenger traffic begins and ends within the Metropolitan District.
[Emphasis added]

The language of such exemption caused the Interstate Commerce Commission serious problems which were subsequently resolved by an amendment to Section 1(a) (4), as provided in Section 5 of the consent legislation, 74 Stat. 1051. ^{2/} In its ultimate form, however, the exemption in Section 1(a) (4) was still confined to regular route operations.

^{1/} Page 5 of the aforementioned transcript of the August 26, 1959, hearing on H. J. Res. 402.

^{2/} See pages 38-40 and 50-51 of House Report No. 1621, 2nd Session, accompanying H. J. Res. 402 (May 18, 1960).

To summarize, then, the legislative history of the Compact makes it quite clear that the sightseeing services performed by PSC in the Metropolitan District, as part of an irregular-route special or charter operation commencing and terminating at a point outside the Metropolitan District, are subject to regulation by the WMATC.

In view of the fact that sightseeing operations in the Metropolitan District performed by carriers domiciled in the Metropolitan District are subject to regulation by the WMATC,^{3/} it is only reasonable that the drafters of the Compact intended that the competitive operations of carriers domiciled outside the Metropolitan District also be subject to such regulation.

To the extent that uncertificated carriers such as PSC can provide such tourists with similar services, operating over the same streets and visiting the same points of interest, destructive competition results which not only threatens the continued survival of the certificated carriers but also substantially curtails the uniform, orderly system of regulation envisioned by the enactment of the Compact.

^{3/} See, for example, Certificate No. 1 issued to White House Sightseeing Corporation which authorizes sightseeing or pleasure tours, in charter or special operations, from points within the Metropolitan District to points within the Metropolitan District. The following decisions, to name a few, affirm the WMATC's jurisdiction over such sightseeing operations: Alexandria, Barcroft & Wash. T. Co. v. Washington M.A.T. Com'n., supra; Gadd v. Washington Metropolitan Area Transit Com'n., 347 F2d 791 (D.C. Cir. 1965); Holiday Tours, Inc. v. Washington Met. Area Trans. Com'n., 352 F2d 672 (D.C. Cir. 1965).

III

THE COMMISSION'S DECISION IS CONTRARY TO
THE INTENT OF ARTICLE XII, SECTIONS 1. (a),
1. (a) (4), and 20 (2) OF THE COMPACT.

Section 1(a) of the Washington Metropolitan Area Transit Regulation Compact ("Compact") provides that "This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except...". The Commission, on Page 3 of its Order No. 897, stated the following:

"The complaint raises questions both of statutory construction and of fact. Taking up the statutory problem first, the question we must resolve is whether the framers of the Compact intended that groups coming to Washington by charter bus who wish to engage in local sightseeing as a group must make use of a local certificated carrier rather than the charter operator who brought them here. We find nothing whatever in the statutory history of the Compact which indicates such an intent. Indeed, the framers, at least in one regard, took pains to exclude from the Compact's terms operations by carriers from outside the Metropolitan District. See Compact, Article XII, §1(a) (4)."

Additional discussions of the applicable Sections of the Compact have been discussed in Title II and to avoid duplicity, will be dispensed with further herein.

IV

THE COMMISSION'S DECISION IS CONTRARY TO
THE FACTS STIPULATED BY THE PARTIES TO
THIS PROCEEDING.

In the first full paragraph on page 3 of Order No. 897, the Commission, makes the following remarks:

"...Taking up the statutory problem first, the question we must resolve is whether the framers of the Compact intended that groups coming to Washington by charter bus who wish to engage in local sightseeing as a group must make use of a local certificated carrier rather than the charter operator who brought them here. We find nothing whatever in the statutory history of the Compact which indicates such an intent."

Is it not possible for another carrier to be certificated in addition to a local carrier? The Compact establishes a single regulatory unit to govern in place of the pre-existing four regulatory bodies. It has exclusive authority (with certain exception, not applicable here) within the Metropolitan Region. Its authority is set forth in the Compact in great detail and with specific words. The language is clear and spelled out in detail. There is no need to search for an "intent" to make "out of town" (meaning outside the Metropolitan Region) charter groups use local certificated carriers. The Compact creates the authority in the Commission to regulate such traffic and if the "out of town" carrier cannot qualify for a certificate, then in that event, a certificated carrier must be used.

The Commission compares itself as a unit comparable to a State. Is it not true that a State can regulate commerce within its jurisdiction, either jointly with the Interstate Commerce Commission or singularly by itself. Does not Respondent maintain, in addition to its Interstate Commerce Commission authority, intrastate authority, by certification, in areas where it performs a similar local service.

The facts in this case were stipulated to by the parties and were believed at least by the parties hereto, to be clearly set forth in order that the Commission may be spared the need to get into mass plotting distinctions as to when a stop becomes sufficient to invoke its jurisdiction. The Commission's determination set forth at the top of page 4 of its Order No. 897 that:

"Nor need we get into hairsplitting distinctions as to when a stop becomes sufficient to invoke our jurisdiction."

begs the issue in this proceeding. The length of time of the stop in the Metropolitan District and the local services being rendered by the non-Commission certificated carrier, performing wholly local services, within the said stop or lay over period in the Metropolitan District is one of the fundamental factors that should be considered. If the Respondent had stopped at a local motel and performed no local sightseeing services while so stopped or laying over, we would not have an issue. But as

long as the facts in this case reveal that the said stop or lay over in the Metropolitan District was solely for the purpose of performing a pre-arranged sightseeing tour in the Metropolitan District, we do have an issue.

The Commission's conclusion set forth at the top of page 4 of its Order 897, ignores the fact that the passengers originating in Respondent's trip from the State of New Jersey laid over at a motel before and/or after arriving in the Metropolitan District. The "stop", could be for minutes, days or weeks. Where do you draw the line?

It is admitted that during this "stop" or lay-over, the Respondent performed a wholly local intra-Metropolitan District sightseeing service. Authority to render this wholly local service must rest with some governmental agency, whether it be the local state, Federal or by statute. Surely, the Interstate Commerce Commission gave the Respondent no local authority. The authority rests solely with this Commission by virtue of the Compact. The Commission cannot ignore its authority; it cannot escape its responsibilities by refusing to assume its regulatory powers. It must regulate the commerce within its jurisdiction or create chaos not known to exist.

To avoid the necessity of needless repetition, applicant calls your attention to its rather lengthy discussion of the legislative intent, the applicable portions of the Compact, related Court cases, and various other reports contained in its "Brief For Complainant" filed with the Commission

September 1, 1967, and its "Reply Brief For Complainant" filed with the Commission October 20, 1967, and which are incorporated herein by reference. Your particular attention is directed to pages 3, 5, 6, 7, 8, 12, and 13 of the brief filed September 1, 1967; and pages 2, 3, 4, 8, 10, 13, 14, 20, 21, 23, 30 and 31 of the Reply Brief, filed October 20, 1967.

The above portions of Transit's Brief and Reply Brief fully discuss the aforementioned Sections of Article XII of the Compact. We do not feel it necessary to repeat that argument in full; however, it is noted the emphasis placed on "regular route" carriers and the fact that "charter operations" are not specifically excepted from the Commission's jurisdiction.

The Commission rightfully found that charter operations are irregular routes in nature and in fact. They are not specifically exempted from the jurisdiction of the Commission. The historical background, set forth in Transit's original brief and in its reply brief, demonstrates beyond doubt, that Congress intended the Commission to regulate such chartered operations.

V

THE COMMISSION'S DECISION DISREGARDS ITS OBLIGATION SET FORTH IN ARTICLE II OF THE COMPACT.

When Congress established the Commission it was looking into the future and the potential growth of the Metropolitan Region. Its intent to give broad powers to the Commission is spelled out in part in Article II of the Compact which reads in part as follows:

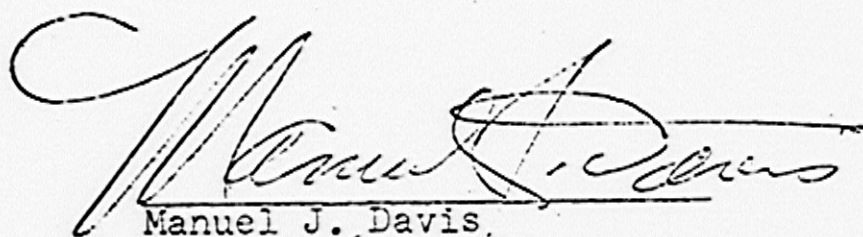
"...The Commission shall have jurisdiction

coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District, as set forth herein."

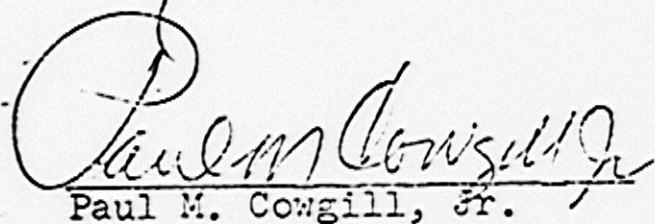
The Commission has closed its eyes to the governing statutes, rules and regulations, and applicable laws and its ears to the intent of Congress. It refuses to see or hear the bold faced truth of this matter. Notwithstanding the practicalities involved in the regulation of thousands of buses and millions of tourists, the Commission is dressed with the necessary jurisdiction and it must assume its duties and administer the necessary authority. If a change in the Compact is desirable, it cannot be accomplished by the Commission ignoring its responsibilities; such a change can only be accomplished by new legislation. Until such a change is brought about through the enactment of new laws, the Commission must exercise its authority and regulate the transportation of chartered groups coming within the Metropolitan Region.

WHEREFORE, D. C. Transit prays that the Commission set aside the decision set forth in Order No. 897, that PSC be ordered to halt its unregulated (and therefore unlawful) operations and that D. C. Transit be granted what other relief found necessary in the premises.

Respectfully submitted,



Manuel J. Davis



Paul M. Cowgill, Jr.

Attorneys for D. C. Transit
System, Inc.
1420 New York Avenue, N. W.
Washington, D. C. 20005

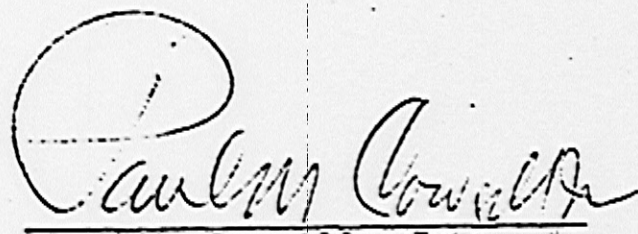
CERTIFICATE OF SERVICE

A copy of the foregoing Application for Reconsideration of Order No. 897 was mailed, postage by first class prepaid, to;

Thomas J. McCluskey, Esquire
Public Service Coordinated Transport, Inc.
180 Boyden Avenue
Maplewood, New Jersey 07040

Robert J. Corber, Esquire
1250 Connecticut Avenue, N. W.
Washington, D. C. 20036

this 16th day of January, 1969.


Paul M. Cowgill, Jr.

APPENDIX 'M'

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

IN THE MATTER OF:

D. C. TRANSIT SYSTEM, INC.

Complainant,

vs.

PUBLIC SERVICE COORDINATED
TRANSPORT,

Respondent.

FORMAL COMPLAINT NO. 17

REPLY OF PUBLIC SERVICE COORDINATED
TRANSPORT TO APPLICATION FOR RECON-
SIDERATION OF ORDER NO. 897.

RICHARD FRYLING,
Attorney for Public Service
Coordinated Transport,
180 Boyden Avenue,
Maplewood, New Jersey.

By:

THOMAS J. McCLUSKEY

Dated: January 24, 1969.

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

IN THE MATTER OF:

D. C. TRANSIT SYSTEM, INC.,

Complainant,

vs.

PUBLIC SERVICE COORDINATED
TRANSPORT,

Respondent.

FORMAL COMPLAINT NO. 17

REPLY OF PUBLIC SERVICE COORDINATED
TRANSPORT TO APPLICATION FOR RECON-
SIDERATION OF ORDER NO. 897.

Comes now Public Service Coordinated Transport (hereinafter called Respondent), and files this Reply to the application filed by D. C. Transit System, Inc. (hereinafter called Complainant), seeking reconsideration of Order No. 897 of the Washington Metropolitan Area Transit Commission (hereinafter called WMATC), served December 18, 1968, wherein WMATC decided that the transportation being performed by Respondent in the District of Columbia did not come under the jurisdiction of WMATC.

INTRODUCTION

Complainant, in its application, attempts to convey the idea that all agencies created by the Congress

of the United States are clothed with some magic that the agencies created by the several States of the United States lack. If it were not for the several States and Territories, the seat of government at Washington would be unnecessary.

Complainant says that the Federal Government and its problems and solutions are unique. Respondent suggests that if WMATC interpreted the provisions of the Compact establishing WMATC and applied them to the facts in this case, as Complainant would have WMATC do, the problems and solutions of the Federal Government would result in confusion twice confounded.

Public Law, 86-794, 86th Congress, H.J., Res. 402, September 15, 1960, a Joint Resolution of Congress, granted consent and approval to the States of Virginia and Maryland, and the District of Columbia, to enter into a Compact related to the regulation of mass transit in the Washington District of Columbia Metropolitan Area.

That regulation had been divided prior to the enactment of the Joint Resolution among the public regulatory agencies of those States, the District of Columbia, and the Interstate Commerce Commission.

WMATC came into being as a result of the passage of that Joint Resolution of Congress.

It is quite evident that the intent of Congress in establishing this Compact was to relieve a situation where divided regulatory responsibility would not be conducive to the development of an adequate system of mass transit for an area encompassing the District of Columbia, the Northern area of Virginia, and the Southern area of Maryland.

It is quite evident from the legislative history resulting in the Joint Resolution establishing the Compact that what Congress intended was an orderly regulation of the passenger carrier facilities which transported commuters to and from their daily tasks within the area encompassed by the Compact. That is so because during hearings prior to the enactment of the Compact, and in the enactment itself, mention was always made of "mass transit".

The modern conception of mass transit is movement of great numbers of passengers on a daily basis within a congested area to and from places of employment as distinguished from movement of large or small numbers of persons sporadically for pleasure, entertainment, education, and leisurely travel.

ARGUMENT

Complainant in this case will not accept the realities of it and will not concede that the Congress by creating WMATC gave it authority only to regulate transportation performed between points within the Washington Metropolitan District and did not give WMATC jurisdiction over transportation performed within the Washington Metropolitan District which is a part of a continuing trip which begins and ends outside the territorial limits over which WMATC has jurisdiction.

That is made quite clear when Section 1(a)(4), Article XII, Title II of the Compact is read and analyzed:

"This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such service except -
(1)-(3) (not applicable).

"(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; * * *

The only conclusion that can be drawn from the above language proves beyond question that the framers of the Compact intended to exclude from the terms of the Compact operations performed by carriers who transport passengers from outside the Washington Metropolitan District to points within the Washington Metropolitan District, including sightseeing trips in the Metropolitan District, and then return to the origin point.

Respondent respectfully urges that a common carrier of passengers for hire authorized to engage in interstate commerce who makes arrangements for a tour to and through the Washington Metropolitan District, including sightseeing trips in the District using its own equipment and returning the same passengers to the point of origin, the passengers paying a single fare for the entire trip, does not require authority from WMATC. Such a requirement would constitute a regulation of interstate commerce in violation of federal law.

Complainant, in its application for reconsideration, still persists in bringing in issues which are not relevant to this proceeding. The only issue to be determined in this proceeding is that of jurisdiction and does not involve an application for

a Certificate of Public Convenience and Necessity. Therefore, the matter of discriminative competition cannot be considered by WMATC in deciding the instant matter.

It is requested that the arguments set forth in the Reply Brief filed with the Commission by the Respondent on September 26, 1967, be incorporated herein by reference.

CONCLUSION

It is urged respectfully that WMATC does not have jurisdiction over interstate charter or special trips provided by carriers pursuant to Certificates issued by the Interstate Commerce Commission where the trips originate and end beyond the territorial limits of the Washington Metropolitan District, and which include sightseeing trips within that District. Therefore, it is urged respectfully that WMATC should deny the application for reconsideration.

Respectfully submitted,

RICHARD FRYLING,
Attorney for Public Service
Coordinated Transport,
180 Boyden Avenue,
Maplewood, New Jersey.

By:

(sgd.) Thomas J. McCluskey
THOMAS J. McCLUSKEY

Dated: January 24, 1969.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply of Public Service Coordinated Transport to Application for reconsideration of Order No. 897, upon Manuel J. Davis, Esq., and Paul M. Cowgill, Jr., Esq., Attorneys for D. C. Transit System, Inc., 1420 New York Avenue, N.W., Washington, D.C., 20005, and Robert J. Corber, Esq., Attorney for National Association of Motor Bus Owners, 1250 Connecticut Avenue, N.W., Washington, D.C., 20036, by mailing a copy thereof by first-class mail, postage prepaid.

Dated at Maplewood, New Jersey, this 24th day of January, 1969.

RICHARD FRYLING,
Attorney for Public Service
Coordinated Transport

By:

(sgd.) Thomas J. McCluskey

THOMAS J. MCCLUSKEY

APPENDIX 'N'

Before The
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

IN THE MATTER OF:

D. C. TRANSIT SYSTEM, INC.,)	
)	
Complainant,)	
)	
vs.)	FORMAL COMPLAINT NO. 17
)	
PUBLIC SERVICE COORDINATED)	
TRANSPORT)	
)	
Respondent.)	

ANSWER OF D. C. TRANSIT SYSTEM, INC., TO
THE REPLY OF THE NATIONAL ASSOCIATION OF
MOTOR BUS OWNERS IN FORMAL COMPLAINT NO.17.

Comes now D. C. Transit System, Inc. ("Transit"), and for answer to the Reply of the National Association of Motor Bus Owners ("NAMBO"), intervenor, answers as follows:

1. That Transit has not misconstrued the phrase "transportation... between any points in the Metropolitan District". The reasoning put forth by NAMBO would enable any carrier to transport passengers into the Metropolitan District and once within the Metropolitan District transport them between points within the Metropolitan District for an unlimited duration, day after day, as long as they returned them to the point of origin. Certainly this is competition and mass transportation as contemplated by the Washington Metropolitan Area Transit Regulation Compact ("Compact"), and an infringement upon the franchise right

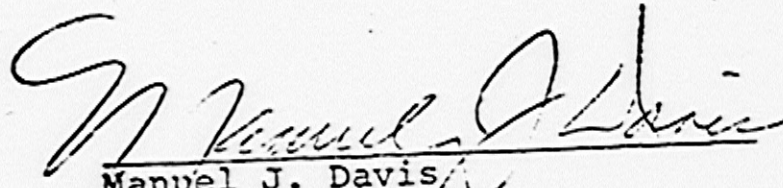
of Transit. In cases where the charter group has formulated plans to remain in the Metropolitan District for a specific period of time, the carrier transporting the group to and from the Metropolitan District, and who continues to transport these people or groups of people within the Metropolitan District, undoubtedly have charged such passengers for such additional service. This is most certainly "transportation... between points in the District".

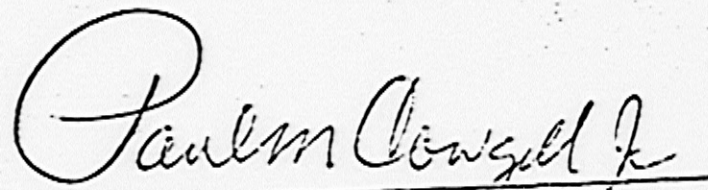
2. The citation noted by NAMBO (Golden Gate v. P.U.C. 19 Cal. Repr. 657, 369 P. 2d. 257), was a case interpreting a local California statute, and would have no application in the present case. The exemption as found by the Court was a water carrier operation outside of the precise language of the California statute. The present case involves only motor carrier of passengers.

3. Although the House Judicial Committee may have said "... The effect... is to treat the Metropolitan District as a State...", it is a well known fact that the District is not a State, does not function as a State, is unique in nearly every aspect of its governmental operations and, the present case is no exception. The District of Columbia is not a State and cannot be compared to any State, irregardless of the operation in question.

WHEREFORE, Transit respectfully requests that the application for reconsideration of Order No. 897 be granted.

Respectfully submitted,

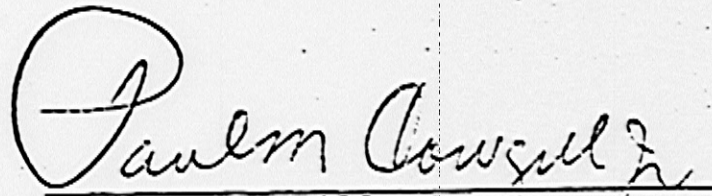

Manuel J. Davis


Paul M. Cowgill, Jr.

Attorneys for D. C. Transit
System, Inc.
1420 New York Avenue, N. W.
Washington, D. C. 20005

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer to the Reply of National Association of Motor Bus Owners in Formal Complaint No. 17 has been mailed, first class postage prepaid, to Thomas J. McCluskey, Esquire and Richard Fryling, Esquire, Attorneys for Public Service Coordinated Transport, 180 Boyden Avenue, Maplewood, New Jersey and to Steptoe and Johnson, c/o Robert J. Corber, Esquire, Attorneys for National Association of Motor Bus Owners, 1250 Connecticut Avenue, N. W., Washington, D. C. 20036, this 31st day of January, 1969.


Paul M. Cowgill, Jr.

APPENDIX 'O'

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 925

IN THE MATTER OF:

D. C. Transit System, Inc.,
Complainant,

v.

Public Service Coordinated
Transport,
Respondent

Served February 17, 1969

Formal Complaint No. 17

By Order No. 897, served December 18, 1968, the Commission dismissed a complaint of D. C. Transit System, Inc., against Public Service Coordinated Transport. By application filed January 16, 1969, Transit requests reconsideration of Order No. 897 arguing, in general terms, that the Commission erred as follows: (1) the Commission failed to comply with the intent of Congress and with pertinent sections of the Compact; (2) the Commission erred in failing to find it had jurisdiction over the transportation in question; and, (3) the Commission's decision is contrary to the stipulated facts and to its obligations under the Compact.

In our opinion, Transit's contentions are without merit and nothing whatsoever would be gained from reopening the proceeding for reconsideration. In Order No. 897 we considered carefully all the issues presented in that matter. We spelled out in detail our disposition of those issues and reasons for our decision. We have reviewed Transit's application for reconsideration, and we find nothing in it not adequately considered in Order No. 897 and nothing that would support reconsideration of that Order. The Commission finds that the application for reconsideration should be denied.

THEREFORE, IT IS ORDERED that the application of D. C. Transit System, Inc., for reconsideration of Order No. 897 be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

Melvin E. Lewis

MELVIN E. LEWIS
Executive Director

TRANSCRIPT OF PROCEEDINGS

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION

In the Matter of:

D. C. TRANSIT SYSTEM, INC.

VS

PUBLIC SERVICE COORDINATED
TRANSPORT

WMATC NO.

FORMAL COMPLAINT NO. 17

Arlington, Virginia

January 26, 1968

HART & HARKINS
SHORTHAND AND STENOGRAPHIC REPORTING
300 - 7TH STREET, S. W.
WASHINGTON, D. C. 20024
NATIONAL 8-0343

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BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

-----X
In the Matter of:
D. C. TRANSIT SYSTEM, INC.

vs
PUBLIC SERVICE COORDINATED
TRANSPORT
-----X

Formal Complaint
No. 17

Offices of the Commission,
1815 N. Fort Myer Drive,
Arlington, Virginia,
Friday, January 26, 1968.

The above-entitled matter came on for oral argument,
pursuant to notice, at 10:00 a.m., before George A. Avery,
Chairman, presiding.

BEFORE:

GEORGE A. AVERY, Chairman, WMATC
RUSSELL W. CUNNINGHAM, General Counsel, WMATC

APPEARANCES:

MANUEL J. DAVIS, and SAMUEL LANGERMAN, 1420 New York
Avenue, Washington, D. C., appearing on behalf
of the Complainant, D. C. Transit System, Inc.

THOMAS J. McCLUSKEY, 180 Boyden Avenue, Maplewood,
New Jersey, appearing on behalf of the Respondent,
Public Service Coordinated Transport.

ROBERT J. CORBER, 1250 Connecticut Avenue, Northwest,
Washington, D. C., appearing on behalf of the
National Association of Motor Bus Owners, Inter-
venor.

P R O C E E D I N G S

CHAIRMAN AVERY: The hearing will come to order.

This is a hearing in the matter of D. C. Transit System, Inc. versus Public Service Coordinated Transport.

We will start by taking the appearances.

For the Complainant?

MR. DAVIS: My name is Manuel J. Davis. Associated with me in this case is Samuel Langerman. We appear for the Complainant, D. C. Transit System, Inc., whose offices are at 1420 New York Avenue, Northwest, Washington, D. C.

CHAIRMAN AVERY: And for the Respondent, Public Service Coordinated Transport?

MR. MCCLUSKEY: My name is Thomas J. McCluskey, 180 Boyden Avenue, in Maplewood, New Jersey. I am appearing for the Respondent, Public Service Coordinated Transport.

CHAIRMAN AVERY: Glad to have you here, Mr. McCluskey.

MR. MCCLUSKEY: Thank you.

CHAIRMAN AVERY: And for the Intervenor?

MR. CORBER: My name is Robert J. Corber, at 1250 Connecticut Avenue, Northwest, Washington, and I am appearing for the Intervenor, the National Association of Motor Bus Owners.

CHAIRMAN AVERY: All right.

Well, I think we can go right ahead with the argument, Mr. Davis. You can proceed.

1 I might mention that I asked Mr. Cunningham, our General
2 Counsel, to sit up here with me this morning, because he is
3 very familiar with this matter, and I thought I would like
4 to have his aid and have him sit by my side as the argument
5 goes on, and he may be asking a few questions in addition to
6 my own.

7 So, you may proceed. And I might mention at the outset
8 that I have read over your Stipulation of Facts and I feel
9 like I am familiar with the facts. I think you can assume
10 that and just proceed into the legal part of your argument.

11 MR. DAVIS: All right, sir.

12 May we be seated or would you rather we stand?

13 CHAIRMAN AVERY: Whichever you prefer, Mr. Davis.

14 I might mention at the outset that you are going to have
15 a half hour, as I understand, and then 20 minutes for each
16 of the intervenors.

17 How did you want to divide your time?

18 MR. DAVIS: I informed Mr. Cunningham that I will take,
19 undoubtedly, 15 minutes or at least like to be notified at
20 the end of 15 minutes, and then reserve my additional time
21 for rebuttal.

22 CHAIRMAN AVERY: All right. Fine, Mr. Davis. You may
23 proceed.

24 MR. DAVIS: Thank you.

ORAL ARGUMENT OF MANUEL J. DAVIS

MR. DAVIS: If it please the Commission and its General Counsel:

I appear here this morning in behalf of D. C. Transit System, Inc., a Complainant in this proceeding. I am pleased to have been advised that the Commissioner has read the Stipulation of Facts. Of course, briefly he undoubtedly is aware of the fact that the Complaint herein against Public Service Coordinated Transport, Respondent in this proceeding, arises out of a very technical question and a question which relates to the jurisdiction of this Commission.

I believe, sir, that it is important in relating to the facts and to the issue involved that the historical background of this legislation, namely the compact upon which and within which this Commission operates, is of vital and significant importance to this proceeding.

In order to have accomplished our objective, I must invite your attention, during the course of this argument, to the excerpts from the legislative history of the compact bearing on WMATC's exclusive jurisdiction in the Metropolitan District.

On Pages 2 and 3 of the Senate Report, No. 1960 of the 86th Congress, Second Session, dated August 23, 1960, and I quote:

"The compact accomplishes a very simple and basic

1 objective, but a most important one. In effect, the
2 compact centralizes to a great degree in a single
3 agency --"

4 that is the WMATC --

5 "-- the regulatory powers of private transit now
6 shared by four regulatory agencies. It will make
7 possible the regulation of such transit within the
8 Metropolitan area without regard to the boundaries
9 of political jurisdiction.

10 "In its capacity as a national legislature,
11 Congress grants its consent to the compact, pursuant
12 to the requirement of the Federal Constitution,
13 removes federal jurisdiction over the subject matter
14 of the compact."

15 Then on pages 3, 5, 7, 9, 19, 21 and 29, of the House Report,
16 No. 1621 of the 36th Congress, Second Session, dated May 8,
17 1960, we have the following, and I quote:

18 "The purposes of the resolution, House Joint
19 Resolution 402, are --"
20 and Section 3 particularly referred to there --

21 "-- to suspend federal jurisdiction relating to
22 or affecting transportation under the compact and
23 to the persons engaged therein."

24 End my quote there. Then, "As a first step, the plan,
25 that is the Transportation Plan, dated July 1, 1959,

1 of the National Capitol Planning Commission and
2 the National Capitol Regional Planning Counsel,
3 recommended that immediate action be taken to im-
4 prove the present public transit service by central-
5 izing regulation of existing privately-owned transit
6 on a regional basis to overcome the barriers im-
7 posed by jurisdictional boundary lines."

8 This is the function of the instant company.

9 MR. CUNNINGHAM: Is it your opinion, Mr. Davis, that the
10 effect of this legislation is to create in essence another
11 state and that the legislatures considered the metropolitan
12 area then to be a state within a state?

13 MR. DAVIS: That is correct, sir. I believe you will
14 find that phrase, as a matter of fact, used in the testimony
15 in the historical background in the pages where I refer.

16 You will find references too for certain purposes. And
17 for these purposes, this metropolitan area would be a state.

18 MR. CUNNINGHAM: Would they then be influenced by prior
19 judicial pronouncements relating to the intra-transportation
20 within the metropolitan area and interstate transportation,
21 as it might otherwise be defined?

22 MR. DAVIS: To the first part of the question, the
23 Courts have said "No."

24 The Courts have said that this compact creates an agency
25 which can make its own determinations and is not bound by the

1 previous determinations of the Interstate Commerce Commission.

2 As a matter of fact, there is a case right on point which
3 we tried against this Commission and which the Fourt Circuit --
4 and we refer to it in our pleadings, in our briefs -- where
5 the Court allowed this Commission to set up its own rules,
6 regulations, under the authority it has, which was for certain
7 purposes diametrically opposite of what the Interstate Com-
8 merce Commission had.

9 MR. CUNNINGHAM: May a state then adopt laws which might
10 be in conflict with the interstate commerce laws and the laws
11 of the states in regard to interstate commerce?

12 MR. DAVIS: Yes, sir. Because in this compact it says
13 that the federal laws are suspended for the life of the com-
14 pact, and then it goes on to list those particular federal
15 laws which have reference to, or are related in part with the
16 transportation interstate-wise.

17 Going further, in Article VIII of the Compact, "It recog-
18 nizes that affirmative legislation by the Congress -- and
19 I insert -- "is required to remove federal jurisdiction from
20 the sphere of compact action. The compact therefore pro-
21 vides it shall become effective 90 days after its adoption
22 by the signatories and consent thereto by the Congress and
23 the enactment by the Congress of legislation to remove the
24 federal jurisdiction from the area of the compact activity."

25 Section 3 of the House Joint Resolution, 402, provides

1 for "removal of federal jurisdiction relating to or affecting
2 transportation under the compact, and to the persons engaged
3 therein."

4 The removal of federal jurisdiction is by suspension
5 of applicable laws and regulations.

6 The Interstate Commerce Commission is the federal agency
7 most affected by the compact. The jurisdiction of the WMATC
8 over the interstate aspects of transit in the metropolitan
9 district would be carved out of the present jurisdiction of
10 the Interstate Commerce Commission.

11 There follows, in parallel columns, a listing of the
12 federal laws which are suspended in whole or in part to the
13 extent that such laws are inconsistent with or in duplication
14 of the provisions of the compact and of the resolution; that
15 is, House Joint Resolution 402, 49 U.S. Code 1958 Edition,
16 Chapter 8, Interstate Commerce Act, Motor Carriers.

17 CHAIRMAN AVERY: Mr. Davis, is there anything in the
18 legislative history that addresses itself directly to the
19 problem we have here? In other words, did the Congress dis-
20 cuss at all the question of the carriers outside the city
21 who bring tourists here and then carry them around? Was that
22 discussed at all directly in the legislative history of
23 this compact?

24 MR. DAVIS: Yes, sir. Very, very fully and completely.
25 And you will find them set out and referred to in the

1 Complainant's brief and in the Complainant's reply brief.

2 CHAIRMAN AVERY: Would you give me the pages where you
3 refer to that?

4 MR. DAVIS: All right, sir.

5 The first page of our opening brief, Page 7, we have Mr.
6 Alper's Report.

7 CHAIRMAN AVERY: All right, fine. So that is on Page 7
8 of that brief.

9 I don't want to take your time with your reading. I can
10 read it myself. But if you just give me, quickly, the page
11 reference where you refer to that?

12 MR. DAVIS: Yes. To clarify the meaning -- then there
13 is an exception as a result, and then Pages 38 to 40.

14 CHAIRMAN AVERY: 38 to 40 of --

15 MR. DAVIS: The House Report, No. 1621. And also Pages
16 50, 51.

17 CHAIRMAN AVERY: 50 to 51?

18 MR. DAVIS: Yes, sir.

19 In the hearings before the Congress with respect to the
20 compact which was eventually entered into, Mr. Alper,
21 represented, or was Counsel for the governmental groups, and
22 he made his report, and I refer to it on Page 7, and you will
23 note therein that he states that, "Sightseeing or charter
24 service within the metropolitan District performed by a
25 carrier engaged in transportation subject to the company would

1 also be subject to the jurisdiction of the Compact
2 Commission."

3 Now, you will also --

4 CHAIRMAN AVERY: That seems to me to carry the im-
5 plication -- I noticed that sentence, when I was reading your
6 brief. That sentence seems to me to carry the implication
7 that sightseeing or charter service within the Metropolitan
8 District performed by a carrier not engaged in transportation
9 is subject to the Compact -- would not be subject to the
10 jurisdiction of the Commission.

11 In other words, I think that sentence cuts both ways
12 as far as your argument is concerned.

13 He seems to be -- I mean the fact that he threw in the
14 phrase "performed by a carrier engaged in transportation
15 subject to the company law," seems to me to indicate that he
16 was thinking of two classes of sightseeing transportation.

17 MR. DAVIS: Well, in order to clarify that slightly
18 more, may I refer to further in his statement, which appears
19 on Page 7:

20 "No exemption would be afforded any motor carrier
21 by virtue of the fact that the transportation performed
22 within the District is performed in the course of an
23 operation over a route, the major portion of which is
24 outside the District, and the carrier performing such
25 transportation is subject to the jurisdiction of the

1 Interstate Commerce Commission or any other agency."

2 I think he clarifies that very, very clearly.

3 Then we consider what the Congress did with respect to
4 his recommendations, and you will find that of all his recom-
5 mendations set out in Section 1(a) of the Company, the Congress,
6 in adopting this -- that is, 1(a) of Title 2, Article XII --
7 he went on to state as follows:

8 "Transportation performed in the course of an
9 operation over a regular route, the major portion
10 of which is outside the Metropolitan District, except
11 where a major portion of the passenger traffic begins
12 and ends within the Metropolitan District, shall be
13 exempt."

14 Now, there we are talking about a regular route operation
15 and nothing more. Had Congress intended more it would have
16 so stated.

17 But never was that the intent of Congress, never was it
18 the intent of the people who were proposing the exemptions.

19 And, as a matter of fact, there never was any intent
20 that there should be an exemption.

21 The clarifying fact -- one of which I think should be
22 mentioned, and that was the *McWood Case*, which is referred
23 to quite strongly by the Respondents and which is set out
24 on Pages 27 to 30 of our reply brief.

25 Now, in that case, which is a case here brought -- the

1 Atwood case involved a carrier which prior to the Compact
2 held an Interstate Commerce Commission Certificate authoriz-
3 ing the regular route operation between Washington, D. C.
4 and Germantown, Maryland, the site of the Atomic Energy
5 Commission.

6 I call your attention that that operation was solely
7 within the Metropolitan District, that particular Certi-
8 ficate. This Certificate, of course, carried with it a
9 Section 206(c), Incidental Authority issued by the ICC,
10 between points on such regular route and points throughout
11 the United States. So that, the regular route portion of
12 the Certificate was solely within the District after the
13 Compact became effective, and the Incidental Rights which
14 Atwood received were those incidental rights which he
15 acquired as a result of Section 208(c) of the ICC Act.

16 As its entire regular route operation was confined to
17 the Metropolitan District, the carrier's Interstate Commerce
18 Commission Certificate was suspended when the Compact came
19 into existence, and in place thereof, the carrier was issued
20 a Grandfather Certificate, by the WMATC, authorizing the same
21 regular route operation between Washington and Germantown.
22 The Grandfather Authority was subsequently suspended by this
23 Commission. Thereafter, the carrier continued to perform
24 charter service from points in the Metropolitan District
25 on the regular route authorized by the suspended Grandfather

1 Certificate to points outside of the Metropolitan District.

2 The issue raised in the Atwood Case was whether the
3 carrier had authority to continue such carrier service in
4 view of the suspension of its Grandfather Certificate.

5 D. C. Transit argued that the carrier had no such
6 authority and asked the Interstate Commerce Commission to
7 issue a cease and desist order. The carrier, in turn, moved
8 that Complaint of D. C. Transit be dismissed since it in-
9 volved operation under Section 20(a)(2) of the Compact was
10 no longer subject to the jurisdiction of the Interstate Com-
11 merce Commission. The Hearing Examiner denied such motion,
12 holding that Section 28(2) of the Compact did not remove the
13 jurisdiction of the Interstate Commerce Commission over the
14 interstate operation from a point within the Metropolitan
15 District to a point outside of the Metropolitan District.

16 I want you to know that D. C. Transit fully supports the
17 Examiner's Decision in the Atwood case.

18 Now, that Atwood case can not be twisted around, as
19 suggested, or as proposed by NAMBO, to support the proposition
20 that Section 28(2) of the Compact precludes the WMATC's asser-
21 tion of jurisdiction under Section 1(a) over sightseeing
22 operations performed within the Metropolitan District in
23 connection with an Incidental Charter Operation commencing
24 and ending outside of the Metropolitan District.

25 CHAIRMAN AVERY: Mr. Davis, that is fifteen minutes. I

1 thought you would like to know.

2 MR. DAVIS: All right. I will complete this statement
3 and then cease.

4 Stated differently, the fact that the WMATC, under
5 Section 20(a)(2) has no jurisdiction over an interstate
6 charter operation from a point within the Metropolitan Dis-
7 trict to a point outside of the Metropolitan District, does
8 not mean that the WMATC has no jurisdiction under Section
9 1(a), overlooking all sightseeing operations performed as
10 part of an interstate charter operation, moving in the
11 reverse direction; that is, from a point outside of the
12 Metropolitan District to a point within the Metropolitan
13 District.

14 I will cease at this point, sir, and save the rest of
15 my time.

16 CHAIRMAN AVERY: You have taken a lot of your time,
17 but I have one or two questions I want to ask you.

18 Now, as I understand, essentially what you are saying
19 here is these out-of-town carriers who bring these people
20 here can not transport them around once they get them here.
21 That has to be done by Certificated Carriers. Isn't that
22 in essence what your position is?

23 MR. DAVIS: That's correct, in strictly local service.

24 CHAIRMAN AVERY: Let's take the height of our tourist
25 season. On a given day, how many buses would you think there

1 are in town of these out-of-town buses?

2 MR. DAVIS: My best estimate would be a thousand.

3 CHAIRMAN AVERY: Yes. You see them around the Elipse
4 just in enormous numbers.

5 MR. DAVIS: Yes. Right.

6 CHAIRMAN AVERY: Now, in order to perform the service
7 yourself, for the height of the season, the height of the
8 peak demand you need a thousand additional buses, don't you?

9 MR. DAVIS: There are other clients -- other buses than
10 my client.

11 CHAIRMAN AVERY: Yes. Let's say the industry would need
12 a thousand additional buses.

13 MR. DAVIS: Yes, and I am sure the industry would be
14 ready, willing and able to perform the service because the
15 service for sightseeing takes place during the Noon rush
16 hour and, I am sure there is sufficient equipment around to
17 handle that.

18 CHAIRMAN AVERY: You mean you are representing to me that
19 your company would not have to provide any additional -- buy
20 any additional equipment in order to service these people?

21 MR. DAVIS: Not that I know of, sir. Not that I know
22 of.

23 I can not foresee where they would have to buy any
24 additional equipment to service these people.

25 CHAIRMAN AVERY: Well, there are no facts on this in the

1 record, but I would say, frankly, I am very skeptical of
2 that statement, Mr. Davis.

3 MR. DAVIS: Well, I can only say that the service that
4 is to be rendered is rendered during the Noon rush hour.

5 CHAIRMAN AVERY: In the first place, that is not true.
6 Plenty of these sightseeing buses are around during the
7 rush hour too.

8 MR. DAVIS: Well, that is not based on my experience,
9 sir.

10 CHAIRMAN AVERY: Well, I am just basing -- none of this
11 is in the record, so we can't make any findings of fact on
12 this. We would have to have evidence on it. But I will
13 just state my own observation having lived here for over ten
14 years.

15 I see a lot of these sightseeing buses around the rush
16 hour, particularly during the afternoon rush hour. Maybe
17 they don't get started in the morning until after about
18 9 o'clock, but in the afternoon, after 4 o'clock in the
19 afternoon, there are plenty of those buses carrying people
20 around.

21 I am very skeptical of the statement that you would be
22 able to handle this without additional equipment, because it
23 is all done during the Noon rush hour, and you would be able
24 to use equipment that you would otherwise have idle.

25 MR. DAVIS: It is called to my attention, during the

1 rush hour we have 700 buses available.

2 CHAIRMAN AVERY: Yes. But the crux of the matter is,
3 could you really perform the service that is presently being
4 performed entirely during Noon rush hours?

5 MR. DAVIS: It is a question of setting it up during
6 those hours. It is very simple. It is not a difficult pro-
7 position at all.

8 CHAIRMAN AVERY: Look, the rush hour starts at 4 o'clock,
9 right? 4:00 to 6:30 is the rush hour?

10 MR. DAVIS: Yes, sir.

11 CHAIRMAN AVERY: Now, that means that the buses -- I
12 don't know exactly the facts -- I am sure Mr. Bell knows --
13 probably the buses that are needed for the rush hour service
14 have to be leaving the garages and getting out to the points
15 where they are needed some time around 3:00, I would imagine;
16 some time between 3:00 and 4:00 those buses have got to be
17 getting out to where they are needed in order to perform their
18 assigned runs for the rush hour.

19 Now, that would mean that you would have to be ending
20 the sightseeing aspect of your operation, assuming you were
21 going to be doing all this, some time between, say, 2:30
22 and 3 o'clock, and you wouldn't be able to start it until
23 sometime between 9:00 and 10 o'clock, if you were going to
24 avoid the rush hour.

25 I mean just on the face of it, that gives you four hours

1 a day --

2 MR. DAVIS: Your argument goes to the question of
3 whether or not someone should be issued a Certificate. That
4 is not an issue before you today.

5 Now, for instance, if your argument were to prevail
6 that D. C. Transit, for instance, did not have sufficient
7 equipment -- if we objected to the Commission issuing a
8 Certificate to these people, that is a different issue com-
9 pletely.

10 CHAIRMAN AVERY: I wasn't getting into that issue.
11 I just started out with my asking you whether you proposed --
12 first of all, whether you were saying that this should all be
13 done by certificated carriers, to which you said, "Yes."
14 And then to the question of where would the equipment to do
15 this come from, and you were making the assertion that you
16 wouldn't need any additional equipment. I am just expressing
17 my opinion.

18 MR. DAVIS: I don't think we need any additional equip-
19 ment and, to the extent we do, I haven't conferred with my
20 people, nor have I said at this point, that we are protesting
21 their application for a Certificate.

22 CHAIRMAN AVERY: I don't think we have to guess very
23 hard -- you are not doing this just in the interest of
24 clearing up an academic question of law, Mr. Davis.

25 MR. DAVIS: I am --

1 CHAIRMAN AVERY: You are bringing this proceeding as a
2 first step to opposing certification proceedings in the
3 future. That is perfectly obvious. Otherwise it would be
4 a futile exercise for you to have brought this case.

5 MR. DAVIS: Well, I can't stop you, sir, from making
6 statements with respect to what we will do in the future when
7 they are not before this court here today -- I am sorry,
8 before the Commission today.

9 All I can say is that I have not been instructed to
10 answer questions, nor did I anticipate such questions to
11 inquire of my client as to how far they would go in the
12 acquisition of additional equipment in the event this issue
13 did arise.

14 CHAIRMAN AVERY: All right.

15 Well, I think we can't go any further with it at this
16 point. But I just wanted to have a little discussion on that.

17 All right, then, we will go on now --

18 MR. CUNNINGHAM: I have one question.

19 CHAIRMAN AVERY: Mr. Cunningham has a question he would
20 like to ask you.

21 MR. CUNNINGHAM: Mr. Davis, is it your contention that
22 Public Service, under its existing authority in law, may take
23 a charter trip from a point in New Jersey, served on its regular
24 route to Richmond, if it avoids Washington, D. C., without
25 any additional authority?

1 MR. DAVIS: I would say based on the information avail-
2 able to me it has the authority to engaged in a charter oper-
3 ation from a point in New Jersey to Richmond and return, Yes,
4 sir.

5 MR. CUNNINGHAM: All right. Now, if the vehicle enroute
6 to Richmond passes through Washington, D. C., does it need
7 a certificate from this Commission?

8 MR. DAVIS: No, sir.

9 MR. CUNNINGHAM: All right.

10 Now, if the same vehicle makes a swing from Linden, New
11 Jersey, through Baltimore, Washington, Hagerstown, Maryland,
12 and return on sightseeing, nobody gets off or on the bus --
13 would that transportation need a certificate from this
14 Commission?

15 MR. DAVIS: Not from this Commission.

16 MR. CUNNINGHAM: All right.

17 Now, assuming the same transportation, except that the
18 vehicle stops at Annapolis and Baltimore and the people get
19 off and look at the Naval Academy and get back on, come to
20 Washington and get off at the Iwo Jima statue, get back on
21 and go to Hagerstown and get off and see some point and then
22 go back to Linden, New Jersey, for that transportation, is a
23 certificate from this Commission needed?

24 MR. DAVIS: I would say we are getting into the area
25 now where the question might very readily be Yes.

1 MR. CUNNINGHAM: And what is your answer?

2 MR. DAVIS: The answer would be Yes.

3 CHAIRMAN AVERY: What is the operative fact that changes
4 the answer?

5 MR. DAVIS: The rendition of a local service by a
6 carrier that does not hold a certificate from this Commission
7 to render local sightseeing or charter service in this area.

8 CHAIRMAN AVERY: Okay?

9 MR. CUNNINGHAM: Yes, sir.

10 CHAIRMAN AVERY: The only fallacy in Mr. Cunningham's
11 hypothetical is there is nothing to see in Hagerstown.

12 (Laughter)

13 Mr. McCluskey, do you want to go ahead? You have 20
14 minutes.

15 MR. MCCLUSKEY: Thank you.

16 ORAL ARGUMENT OF THOMAS J. MCCLUSKEY

17 MR. MCCLUSKEY: May it please the Commissioner and
18 General Counsel:

19 Mr. Davis, in his opening argument, has laid great stress
20 on the Congressional Hearing which were culminated in the
21 establishment of this Compact and Commission.

22 Now, in those hearings, the Congress made this state-
23 ment:

24 "Washington, like every other large American
25 city, has been suffering from steadily worsening

is 1 traffic conditions. The mass transportation survey
2 showed that reliance on the private automobile to
3 carry all commuters to work each day would require
4 close to 30 free lanes in the north-central corridor
5 alone, and would turn downtown Washington into a
6 concrete sea of highways and parking lots.

7 "For this reason, the Washington area, like
8 several other metropolitan areas, is showing renewed
9 interest in public transportation. It is now
10 generally recognized that a healthy mass transpor-
11 tation system is essential to every metropolis.
12 In no other way can large numbers of people be
13 carried quickly and economically to their places
14 of work each day. In no other way can the downtown
15 area be revived as a center of business, finance,
16 cultural events and other activities that draw
17 people from all parts of the metropolis."

18 1960, U.S. Code, Congressional and Administrative News, Volume
19 2, Pages 3215 and 3216.

20 Now, it has been the contention of Public Service Coor-
21 dinated Transport throughout this entire proceeding that
22 the main purpose and one purpose for establishing this
23 Washington Metropolitan Area Transit Commission was to relieve
24 mass transit in the area, commuter transportation.

25 Now, Mr. Davis, in his brief, will argue about the

1 difference between commuter and mass transit. I think they
2 are synonymous. And this is the purpose and the main purpose
3 of establishing this Commission.

4 Now, Mr. Davis quoted from Mr. Alper's suggestions, and
5 I believe it was mentioned here this morning that Mr. Alper
6 recommended that the sightseeing and charter service be under
7 the jurisdiction of this Commission only for those operators
8 who are subject to the jurisdiction of this Commission. And
9 that means those who are providing service within the con-
10 fines encompassed by the Commission. That would be an
11 orderly regulation of transportation for those carriers which
12 come under the jurisdiction of this Commission.

13 CHAIRMAN AVERY: Mr. McCluskey, there is one thing that
14 occurs to me in connection with your argument about mass
15 transit. I don't know whether you are aware, but we are in
16 the middle of a court case right now where we are arguing
17 directly -- we are opposing that argument right now -- this
18 Commission is.

19 Are you aware of this case about the Mall Shuttle?

20 MR. MCCLUSKEY: Yes.

21 CHAIRMAN AVERY: That argument was made by Universal,
22 the Interior Department's concessionaire for the Mall Shuttle,
23 and by the United States Government -- particularly, really,
24 by the United States Government. They are the ones who were
25 urging that argument most strongly, that this Commission was

is
1 only set up to deal with commuter problems and not with prob-
2 lems like taking care of tourists on the Mall through a
3 shuttle operation around the Mall. And we are already on re-
4 cord, in briefs in court, not in an opinion by the Commission
5 but in briefs in the court, and I believe we are going to the
6 Supreme Court within the next week or so, and we will be
7 arguing directly the opposite of this argument you are mak-
8 ing.

9 I mean it certainly is the first problem that occurs
10 to me when I hear you making this argument to me. I don't
11 know how we could accept that argument here and be arguing
12 just the opposite simultaneously in the Supreme Court.

13 MR. McCLUSKEY: I think a distinction could be made.
14 It may be a fine distinction, but as I understand the
15 shuttle -- is it a shuttle service?

16 CHAIRMAN AVERY: They call it a shuttle. It is just --
17 let me take a minute or two just to tell you what that case
18 is about.

19 The Interior Department wants to have a bus running on
20 the Mall from the Capitol to the Lincoln Memorial, mainly
21 on the Mall streets -- it comes out onto Constitution Avenue
22 at one point. The bus would be manned not only by a driver
23 but by a guide who would, as the bus proceeds on its route,
24 give a spiel about the sights along the Mall. And you would
25 be able to ride this either the whole circuit around or you

1 would be able to get on and off at intermediate points and,
2 in other words, say, get off at the Smithsonian and then see
3 that and then get back on and ride to the next place.

4 And the Interior Department and the Concessionaire claim
5 that because of certain statutes which give the Secretary
6 of Interior exclusive jurisdiction over the Mall, we don't
7 have any jurisdiction. And we claim No, this is transportation
8 For Hire between points in the Metropolitan District and
9 clearly falls within the Compact.

10 As it stands at the present time, we have been sustained
11 by the Court of Appeals, and the Concessionaire and the
12 United States are seeking certiorari in the Court of Appeals.

13 But those are the facts and that is as it stands.

14 MR. McCLUSKEY: The distinction I wanted to make was this:
15 that, that transportation is going to be performed wholly with-
16 in the area over which this Commission has jurisdiction.

17 So that the mass transit -- my argument on that, I don't
18 think would hurt your theory. If you tried to regulate charter
19 and special services, as Mr. Davis would have you do, for
20 carriers outside the area, then I might agree with you, sir.
21 But you, I think, would have jurisdiction over any service
22 performed between points in the area in which the Commission
23 has jurisdiction.

24 That would be my reply to that, sir.

25 CHAIRMAN AVERY: I see. All right. Well, you can proceed,

is

1 then.

2 MR. McCLUSKEY: In this case that went into the U. S.
3 Court of Appeals, D. C. Transit against the Washington Metro-
4 politan Area Transit Commission, intervenor was WMA Transit
5 Company, decided by the United States D. C. Court of Appeals
6 on March 7. Judge McGowan, in his Opinion, starts off that
7 "This review authority is but one facet of the Washington
8 Metropolitan Area Transit Regulation Compact, Public Law
9 86,794," and so forth, "which brought the Commission into
10 being as part of a comprehensive scheme transcending state
11 lines for the regulation of mass transit."

12 Now, that is Judge McGowan.

13 CHAIRMAN AVERY: Is it your position, Mr. McCluskey,
14 that we have no jurisdiction over charter and sightseeing
15 operations?

16 MR. McCLUSKEY: Within the District?

17 CHAIRMAN AVERY: Yes.

18 MR. McCLUSKEY: No, I would say, sir, that under my
19 Alper's suggestion, and his recommendation, that perhaps
20 you would have.

21 CHAIRMAN AVERY: We certainly have asserted such
22 jurisdiction. We have certificated a number of sightseeing
23 charter carriers.

24 MR. McCLUSKEY: That's right, but that --

25 CHAIRMAN AVERY: You are not saying that that has been

1 done improperly or outside the confines of our jurisdiction?

2 MR. MCCLUSKEY: No. Definitely not, sir.

3 CHAIRMAN AVERY: You limit your argument to --

4 MR. MCCLUSKEY: To people whom we bring from a point
5 outside of the District as a regular route operator is exempt,
6 performing interstate transportation within the District,
7 if he brings people from outside the District.

8 Now, our movements are continuous movements. We start
9 a trip at Linden, New Jersey under our Section 208(c) of the
10 Interstate Commerce Act, which is an incidental right which
11 we have, as you know, from our regular route authority. Those
12 people maintain their same character from the time that they
13 leave Linden until they return there.

14 Now, Mr. Davis would like to clothe this Commission, I
15 am sure, with the authority to regulate every carrier who
16 brought a group into the area. He would have you meet them
17 at the line, I imagine, the boundary lines for the jurisdic-
18 tion of this Commission.

19 And we would not be able to transport anyone around this
20 area to see the sights.

21 And I say --

22 MR. CUNNINGHAM: Mr. McCluskey, excuse me. You take,
23 I take it, charter trips to other cities in the United States
24 under the same type of arrangement that exists here.

25 MR. MCCLUSKEY: Definitely...

1 MR. CUNNINGHAM: And you make one or more stops
2 in a city.

3 MR. McCLUSKEY: Definitely.

4 MR. CUNNINGHAM: Or in a state.

5 MR. McCLUSKEY: Or in a state.

6 MR. CUNNINGHAM: To your knowledge, has any state
7 asserted jurisdiction over transportation between two
8 points in its state as being intrastate transportation as
9 contrasted with interstate transportation?

10 MR. McCLUSKEY: No, sir. None.

11 We do have to pay taxes, fuel taxes and things like that.
12 But as far as regulation is concerned, No.

13 CHAIRMAN AVERY: I think you do that in the District.
14 I guess you know I am also the Chairman of the Public
15 Service Commission. I think you have to get a license from
16 them, don't you?

17 MR. McCLUSKEY: Yes. We have 15 free days and then we
18 get a license -- as a matter of fact, Mr. Davis has mentioned
19 in his brief that we had licensed, I think, 13 or 15 buses
20 during 1966, and we do that.

21 We pay the license fee to the District for -- it is a
22 sightseeing thing, taxes, to which every municipality or
23 state is entitled, I think.

24 MR. CUNNINGHAM: You view that simply as another tax
25 to be paid and not as a regulatory authorization?

1 MR. McCLUSKEY: No regulation.

2 Now, as Commissioner Avery said to Mr. Davis, we should
3 come in -- or if we did come in here and ask for a Certi-
4 ficate of Public Convenience and Necessity, I think we would
5 be sort of burdened with a little trouble from D. C. Transit,
6 because in their brief, they mention that we do pay taxes,
7 get the authority from the District to operate the buses in the
8 District, and it would be just as easy to get a Certificate
9 of Public Convenience and Necessity from this Commission.

10 Now, I doubt that very much, because Mr. Davis, in his
11 opening brief, did mention about competition. And that is
12 the reason that in my opening brief I said that this Com-
13 mission should remember, and remember only that this was
14 a jurisdictional question, not one of public convenience and
15 necessity.

16 And Mr. Davis, in his reply brief, mentions, I think
17 about the increase in the number of automobiles which will be
18 riding the streets of Washington in the next few years.

19 Well, I don't think this Commission would ever attempt
20 to assume jurisdiction over a private automobile. But Mr.
21 Davis says this is something that this Compact was established
22 for, and the Commission was established for to regulate this
23 transit.

24 Now, we bring the people into the District. If D. C.
25 Transit transported them, there wouldn't be any lessening in

1 the number of vehicles on the street.

2 MR. CUNNINGHAM: Mr. McCluskey, under your stipulation
3 of facts, I note that the patrons on this particular vehicle
4 in question spent two nights in Washington.

5 MR. McCLUSKEY: That's right.

6 MR. CUNNINGHAM: Was this paid through a package price
7 to Public Service and you paid the hotel space?

8 MR. McCLUSKEY: That's right. That is the way we do
9 it. It is an entire package and we operate it under a special
10 certificate or under our Charter Authority, under 208(c).
11 And it is an entire package to transport these people from
12 a point in New Jersey or Pennsylvania, where we have author-
13 ity, or New York, to the District or the environs of the
14 District. And we return them to the same place -- and it is
15 all one price.

16 CHAIRMAN AVERY: Really, the crux of the whole legal
17 question here is -- I mean I assume the real difference
18 between you and D. C. Transit, lies in what constitutes a
19 break in the transportation.

20 MR. McCLUSKEY: That's right.

21 CHAIRMAN AVERY: D. C. Transit, I guess, says the fact
22 that they stay overnight means that somehow it is a break in
23 service. In other words, you just have it on the ground that
24 what is really going on here is transportation between a point
25 in New Jersey to the District and return to a point in New

1 Jersey?

2 MR. McCLUSKEY: That's it.

3 Of course, all of your Interstate Commerce Commission
4 Certificates say, "beginning and ending."

5 CHAIRMAN AVERY: Yes.

6 MR. McCLUSKEY: At your origin point.

7 We could not, under 208(c), come into the District and
8 take a group from it, because our origin territory is confined
9 to where our regular routes operate under 208(c).

10 CHAIRMAN AVERY: You take the position that staying over-
11 night in a hotel and staying a couple of days here does not
12 constitute a break, and I take it you justify that on the
13 grounds that this remains a homogeneous group and they are
14 transported as a group and so on and so forth.

15 Is that your position?

16 MR. McCLUSKEY: That's right.

17 CHAIRMAN AVERY: Are you willing to say what in your opinion
18 would be a break which would constitute -- you know, make
19 the transportation such that it would have to be done by a
20 certificated carrier?

21 MR. McCLUSKEY: In my opinion, sir, there would be no
22 break under a system like that.

23 Now, if Greyhound Lines, or Safeway Trails brought
24 people in on a regular route trip between fixed terminals --
25 and they are regular trips -- and brought a group in and left

1 them in Washington, then I would say that group on sightseeing
2 would originate in Washington. And this is the jurisdiction
3 of this Commission, for those persons who originate their
4 trip here, come in by some other means, train, automobile.
5 And D. C. Transit can generate the traffic for that. But
6 when an outside carrier comes into this area and keeps his
7 group the same as it was when it left its origin point and
8 returns to that origin point, I say this Commission does not
9 have any jurisdiction over them.

10 MR. CUNNINGHAM: You have five minutes remaining, Mr.
11 McCluskey.

12 MR. MCCLUSKEY: Thank you.

13 Mr. Davis has mentioned something about Article V, I
14 think, Subsection (2). He mentioned Article V.

15 Now, Subsection (2), just to get back to my mass transit
16 argument, they say in that: "Shortening travel transit time."

17 This is what the Commission is established for.

18 Now, under our 208(c) Authority, that Authority you did
19 not have to prove anything before the Interstate Commerce
20 Commission, up to now. That authority can not be separated
21 from a regular route authority. And I say that is a further
22 argument that that is a regular route.

23 CHAIRMAN AVERY: I am sorry. I am not following you,
24 Mr. McCluskey.

25 MR. MCCLUSKEY: Well, it is part of our regular route

1 authority so that if ---

2 CHAIRMAN AVERY: In other words, the authority to carry
3 people down here is part of the regular route authority you
4 are granted by the ICC?

5 Is that what you are saying?

6 MR. McCLUSKEY: Well, it comes under 203(c), which
7 can't be separated. You can't spin it off to sell it. It
8 is there. And you get it as an Incidental Right.

9 So that, if D. C. Transit's argument prevailed and said
10 that we were subject to the Compact, then under 20(a)(2), we
11 would be exempt.

12 MR. CUNNINGHAM: Mr. McCluskey, isn't it true that when
13 the Interstate Commerce Act was drafted, that the principal
14 objective the Congress had was the regulation of regular route
15 operations?

16 MR. McCLUSKEY: Yes.

17 MR. CUNNINGHAM: Now restricted to solely passengers?

18 MR. McCLUSKEY: I would say so.

19 MR. CUNNINGHAM: And the Congress at the same time
20 recognized that "Charter" and "Sightseeing" were incidental
21 and not the principal but a minor consideration, and should
22 be regulated as well as the regular route operations?

23 MR. McCLUSKEY: That's right.

24 MR. CUNNINGHAM: And do you not feel that this would
25 be the same contention that would be used in a consideration

1 of our law?

2 MR. MCCLUSKEY: You mean so that you would have juris-
3 diction over special and charter operations?

4 MR. CUNNINGHAM: Within the confines --

5 MR. MCCLUSKEY: Yes, within the confines of the District
6 where this Commission has authority.

7 Now, there is just one other point I would like to make.

8 In my brief, I cited some judicial decisions and decisions
9 by Commissions. Now, Mr. Davis, in his reply brief, said they
10 were irrelevant. I think Mr. Davis is inconsistent, because
11 he has used court decisions and decisions of commissions to
12 try and substantiate his position.

13 So, with that, I am finished.

14 Thank you.

15 CHAIRMAN AVERY: Thank you, Mr. McCluskey.

16 Mr. Corber?

17 ORAL ARGUMENT OF ROBERT J. CORBER

18 MR. CORBER: Mr. Avery, Mr. General Counsel:

19 I would like, at the outset, to just quickly recite
20 some of the consequences here which we think are of rather
21 startling proportions for the Intercity Motor Bus Industry
22 if this Commission should adopt the position which is being
23 asserted by the Complainant, D. C. Transit.

24 As Mr. McCluskey has pointed out, D. C. Transit's position
25 means that no carrier holding authority from the Interstate

1 Commerce Commission for the transportation of special or
2 chartered parties would be able to operate any charters or
3 any special parties into the Metropolitan District without
4 some kind of authority from this Commission.

5 Now, as the Commission knows, there are literally hundreds
6 of these carrier throughout these United States which are
7 operating charters of this nature into the Metropolitan Dis-
8 trict and are transporting millions of people from various
9 parts of the country into the Metropolitan District, who
10 would, under the proposal which is made here, have to stop
11 that transportation, would no longer be able to carry it for-
12 ward unless this Commission were to take some kind of action
13 to certificate these hundreds of carriers throughout the
14 country.

15 CHAIRMAN AVERY: Of course, this is just, again, a matter
16 of opinion here. It is not evidence. But would those
17 carriers -- would it be economically feasible for these car-
18 riers to continue to carry people to the District and then
19 turn them over to a local carrier, or would that become an
20 uneconomic operation?

21 MR. CORBER: That is my very next point, because I
22 think that is one of the strange consequences here.

23 The fact is, I don't know of any legal way that these
24 could be turned over to a local carrier.

25 Now, I am sure that this is what D. C. Transit has in mind,

gasl
fls is

1 that if they can succeed here, that these carriers will be
2 required to turn these charter parties over to them at the
3 District line and they will then take care of them and turn
4 them back to the carrier at the District line and they will go
5 on and complete the charter.

6 But under the Interstate Commerce Act, and the provisions
7 of that Act on joint through route arrangements, under the
8 Interstate Commerce Commission -- and incidentally, there are
9 some proceedings now pending before the ICC which would involve
10 some further clarification of this matter -- there just isn't
11 any way in which carrier can interline or interchange with
12 respect to charter groups. It is contrary to the very concept
13 of a charter as a single contract involving a single group
14 for a single vehicle, going from an origin to a destination
15 point.

16 So there is just now way that D. C. Transit legally can
17 participate in this kind of transportation.

18 CHAIRMAN AVERY: Actually, my question went -- you addressed
19 yourself to the legal aspect of it. I was curious about the
20 economic aspect.

21 In other words, would a non-District carrier -- would it
22 be economically feasible, would it be worth his while to carry
23 people here just to turn them over to D. C. Transit, or would
24 that make his price so high that it wouldn't be economically
25 feasible? I just wonder what the economic effect would be.

1 MR. CORBER: I don't know the answer to that question.
2 Now Mr. McCluskey might have a better answer than I could.

3 I would have some questions as to whether it would be
4 economically feasible, but I would hesitate to make a definite
5 assertion about it.

6 There can be no doubt that it would increase the costs
7 of the operation. You have increased personnel required for
8 interlining or interchanging arrangements, maybe some stations
9 would be involved, extra construction involved. I don't
10 think there is any question that it would add cost.

11 CHAIRMAN AVERY: Obviously you'd have added cost, because
12 you would have the out-of-city driver sitting idle for the
13 two or three days, whatever it is; while the D. C. Transit
14 driver and D. C. Transit bus were carrying the people around.

15 MR. CORBER: That's right.

16 CHAIRMAN AVERY: So you have the added cost of another
17 bus and another driver for a couple of days and somebody has
18 to pay that cost, and the somebody is obviously the passenger.

19 And I just wonder whether that added cost would make it
20 an economically unattractive thing to the passenger.

21 MR. CORBER: I think it is quite possible that it would.

22 CHAIRMAN AVERY: But you can't give me any answer.

23 MR. CORBER: I am afraid I haven't made a study on that
24 and I haven't asked for a study on that.

25 CHAIRMAN AVERY: All right.

1 MR. CORBER: The other part of this is of course, as the
2 Commission knows, D. C. Transit would have authority to origi-
3 nate charters from the Metropolitan District area, but it
4 can't originate charters from New York, New Jersey, Indiana,
5 Ohio, or these hundreds of other places where these millions
6 of people come from into the District. So I don't see as a
7 practical matter or as a legal matter how D. C. Transit can
8 participate in this kind of transportation. And the consequence
9 is that the millions of people who are now using this kind of
10 service would no longer have it available to them if D. C.
11 Transit were to prevail, again unless this Commission were to
12 take some kind of action to certificate the hundreds of
13 carriers who would be involved.

14 And we also should from a practical standpoint keep in
15 mind that there are a number of these carriers who maybe bring
16 only one or two charters into the District of Columbia a year
17 who are operating out in Arizona or out in Nevada --

18 CHAIRMAN AVERY: They bring the senior class and that
19 kind of thing.

20 MR. CORBER: Yes, this kind of thing, and they would be
21 required to come in here and get a certificate and maintain
22 their certificate rights and so forth.

23 So it is not only legally questionable; it is practically,
24 I think, not feasible.

25 MR. CUNNINGHAM: Mr. Corber, do you know, for example,

1 taking your Arizona carrier, if it took under the laws of
2 the Interstate Commerce Commission to the State of
3 Pennsylvania -- if a trip originated in Arizona and went to
4 Pittsburgh and the people spent the night there, got off and
5 saw some of the museums and other points of interest, and then
6 took that same group to Philadelphia and performed the same
7 function and returned, does Pennsylvania consider that an
8 intrastate movement?

9 MR. CORBER: It does not.

10 CHAIRMAN AVERY: Does any state in the country consider
11 such operation an intrastate movement?

12 MR. CORBER: No, sir. And this is something that we are
13 called upon to review from time to time.

14 There was a case some years ago where the question was
15 raised about uniform requirements in terms of regulations
16 and so forth where these kinds of situations were discussed,
17 and I know of no state in the United States anywhere which
18 exerts any kind of entry control over interstate charter
19 movements under ICC certificate rights. It just isn't being
20 done.

21 There are some requirements, as I know you are aware,
22 with respect to insurance, with respect to some safety matters.

23 MR. CUNNINGHAM: We are not interested in that. Strictly
24 a regulatory operating authority.

25 MR. CORBER: No entry control whatever is being exercised

1 by any state. So that if D.C. Transit were to prevail, this
2 would be the only local jurisdiction in these United States
3 which would be exercising this kind of control.

4 Well, we don't think that the framers of this Compact,
5 the states who were involved and Congress ever intended any
6 such consequences as these when this Compact was drafted, when
7 the consent legislation was adopted. It didn't intend to
8 impose this kind of regulation in this type of situation.

9 CHAIRMAN AVERY: Is there anything in the legislative
10 history on that that you would like to point out?

11 MR. CORBER: Yes, sir, I would.

12 I wonder if you would indulge me while I develop one more
13 point, and then the legislative history.

14 CHAIRMAN AVERY: All right.

15 MR. CORBER: As I say, we don't think that this Compact
16 uses language either which would require this kind of result.
17 And I would like to refer to section 1(a) under Article 12 as
18 it relates to transportation covered, and the language which
19 says "This Act shall apply to the transportation for hire by
20 any carrier of persons between any points in the Metropolitan
21 District."

22 "The language "between any points in the Metropolitan
23 District" is I think important here. It does not say "trans-
24 portation into the District"; it says "transportation between
25 points" in the District of Columbia.

1 Now, this cannot include under our understanding of the
2 law a charter movement which starts somewhere outside of the
3 District, comes into the District, and then goes back out of
4 the District. That in legal contemplation, regulatory law
5 accepted by every jurisdiction of which at least I have any
6 knowledge -- that is considered a continuous journey even though
7 stops are made along the way by a single party in a single
8 vehicle, and it simply cannot be broken up in the way that
9 D. C. Transit appears to want to break it up.

10 Now, what does "between any points in the Metropolitan
11 District" mean? Well, I think it is clear that it means to
12 catch carriers who are boarding and discharging passengers
13 between points in the Metropolitan District. This is what it
14 is talking about.

15 I found a case -- I apologize to the Commission and to
16 Mr. Davis. I didn't find this until last night, and it is
17 not in my brief. It is of interest here, and I would like to
18 cite it.

19 It is the Golden Gate Scenic Steamship Lines, Inc.,
20 versus Public Utilities Commission, 19 California Reporter
21 657, 369 Pacific 2d, 257. It was a 1962 case, involving a
22 statute containing language very similar to this which required
23 a certificate by any carrier providing transportation between
24 points in this state, meaning the State of California.

25 In that case a water carrier was operating a sightseeing

1 service at San Francisco Bay, doing a loop out through the Bay
2 and coming back to the point from which he started. And the
3 question was whether he was operating between points and would
4 thus be subject to the jurisdiction of the California Public
5 Utilities Commission. The Supreme Court of California held
6 that he was not operating between points, because the phrase
7 "between points" means the same thing as "between places and
8 termini." And here I would like to quote this language of
9 the Court:

10 "'Points' as used in Section 1007," the section involved
11 here, "is the equivalent of 'termini.' It thus follows that
12 to meet the statutory limitation to 'transportation between
13 points' there must be two or more ends of the line, stations,
14 stops or places between which the vessel operates. No operation
15 of that kind was or is being carried on by petitioner."

16 I cite that because I think it emphasizes the point
17 that this language "between any points in the District" means
18 boarding and discharging passengers, means stations, means
19 stops for the purpose of serving passengers or taking on
20 passengers and letting passengers go.

21 Now that is significant when it comes to interpreting
22 Section 1(a)(4) of Article 12. The language "between any
23 points" would catch the carrier who has a regular route
24 operation from, say, New York down through Maryland, through
25 the District of Columbia, and say on down to Richmond, if stops

1 were made in the District of Columbia, if passengers were
2 boarded, if stations were maintained, if passengers were
3 unloaded. And the framers of the Compact were concerned about
4 that, Congress was concerned about it in the consent legisla-
5 tion. And that is why this 1(a)(4) was adopted. And it says
6 that in that kind of situation -- and I refer specifically
7 to the language beginning "Including" -- let me say that what
8 the language as you know does is say that if there is operation
9 over a regular route between a point outside the District and
10 a point inside the District, if it is authorized by a certifi-
11 cate or permit, "it is excepted from the coverage of the Act."
12 Then it adds, "including transportation between points on such
13 regular route within the Metropolitan District as to interstate
14 and foreign commerce."

15 Well, now, that was put in there because if it weren't
16 there, the language up ahead, "between any points" would make
17 subject to the jurisdiction of this Commission a carrier
18 operating a long-line interstate service where he had stops
19 in the Metropolitan District. But it is significant that the
20 framers of this Compact did not include that kind of an
21 operation involving service outside the Metropolitan District
22 to be covered by the Compact or to be regulated by the
23 Commission.

24 Now, obviously as to local traffic on such a run, there
25 is jurisdiction in this Commission. And that's why the

1 reference to "as to interstate or foreign commerce."

2 It is only the local traffic between points in the
3 Metropolitan District that Congress and the framers of the
4 Compact intended to reach and intended to have regulated by
5 this Commission.

6 Now, further support for that interpretation of Section
7 1(a)(4) comes from the legislative history which we have cited
8 and quoted in our brief, the Intervenor's brief, on page 10,
9 language which was used by the Congress when it was considering
10 amendment of Section 1(a)(4).

11 As you know, the Alper Report, which is referred to by
12 Mr. Davis, which preceded this Compact, had proposed that all
13 transportation within the boundary lines of the District would
14 be subject to the jurisdiction of this Commission with some
15 minor exceptions that don't involve common carrier service.
16 Whether it involved intra-metropolitan area service, interstate
17 commerce, or anything else, all of that was to be made subject
18 to the Compact.

19 Well, Congress and the framers of the Compact didn't
20 agree. And so they adopted this language about -- first the
21 language that would except operation over regular route if a
22 major portion of the route is outside the Metropolitan District.
23 Even that was not considered clear enough and satisfactory
24 enough in limiting this jurisdiction to local traffic. So
25 ultimately Section 1(a)(4) in its present form was adopted.

1 And in the course of doing that, the House report to which
2 Mr. Davis refers, Report No. 1621, in which he quoted page
3 10, states that "Amendment No. 8 expresses the Congressional
4 policy that jurisdiction of the Compact should extend only to
5 transportation performed solely within the proposed Metropoli-
6 tan District." That is at page 3 of that House Report.

7 Then on page 22 of that Report there is first reference to
8 this matter of this local traffic. And it is said that "The
9 effect of this amendment from the standpoint of jurisdiction is
10 to treat the Metropolitan District as a state, with a conse-
11 quence that the Washington Metropolitan Area Transit Commission
12 would have jurisdiction over purely intra-Metropolitan District
13 transportation, and the Interstate Commerce Commission would
14 have jurisdiction over transportation crossing the Metropolitan
15 District boundaries."

16 And this really is what we are arguing. We recognize
17 that this Commission has complete jurisdiction, as does a
18 state, over what would be the equivalent of intrastate
19 commerce -- or intra-metropolitan commerce, but that it was not
20 intended to have jurisdiction over commerce which crosses the
21 boundary of the District; that it was intended to remain with
22 the Interstate Commerce Commission.

23 Now I think Section 28(2) is further evidence of the
24 intent here to make this division of jurisdiction between local
25 and the Interstate Commerce Commission, where they expressly

1 set aside charter and special operations service under ICC
2 certificates.

3 MR. CUNNINGHAM: Mr. Corber, under your argument, then, is
4 the crux of the case now, in your opinion, before the
5 Commission to decide whether or not Public Service is engaging
6 in intra-Metropolitan District transportation by the fact that--
7 and does the fact that these people are brought in and spend
8 the night in a motel or hotel and then board the bus the next
9 day to see the views -- does that transportation commencing
10 with their boarding the bus the next day here and going from
11 point to point in the metropolitan area constitute intra-
12 metropolitan area transportation?

13 MR. CORBER: Of course I would take the position that is
14 not intra-metropolitan traffic. But I do agree that this is
15 essentially the question which the Commission has to resolve.

16 CHAIRMAN AVERY: Yes, that is the crux of it right there.

17 MR. CORBER: One other thing I would like to point out,
18 and I think that can be resolved under this Section 1(a) and
19 under what I referred to, but I think the Commission can also
20 decide this case under Section 1(a)(4) if it chose to do so.
21 And I just want to quickly there point to the fact that as
22 Mr. Davis has pointed out in his brief, that 1(a)(4) grants an
23 exception for carriers holding certificates or permits from the
24 Interstate Commerce Commission. And I think the reference to
25 permits is highly significant, because a permit is not issued

1 for the same type of service as a certificate.

2 Permits are issued only to contract carriers under the
3 Interstate Commerce Act, and Section 203(a) (15) of the
4 Interstate Commerce Act defines what a contract carrier is,
5 and it states, quote: "A carrier offering transportation ...
6 under continuing contracts with one person or a limited number
7 of persons, either (a) for the furnishing of transportation
8 services through the assignment of motor vehicles for a
9 continuing period of time to the exclusive use of each person
10 served, or (b) for the furnishing of transportation services
11 designed to meet the distinct need of each individual customer."
12 That is what a permit is issued for.

13 There are characteristics there similar to special service
14 types of transportation.

15 I might add there are a line of decisions by the Inter-
16 state Commerce Commission in which they have said one of the
17 tests we apply to determine whether you have a contract carrier
18 service or a regular route service is whether you are operating
19 a regular route. In other words, these are not -- these per-
20 mits are not issued for service which would be classically
21 defined as regular route service.

22 MR. CUNNINGHAM: Mr. Corber, excuse me. If Public
23 Service Coordinated of New Jersey came in here under a permit
24 authority rather than a certificate, the issue would still be
25 the same, would it not? The resolution basically the same?

1 MR. CORBER: Yes.

2 What I am doing here, Mr. Cunningham, is simply trying
3 to indicate some of the intent which we see incorporated in the
4 Act, some of the intent incorporated under Section 1(a)(4),
5 intent which we say is contrary to the very strict definition
6 of regular route which Mr. Davis is urging in this case.

7 That is really the only point of argument.

8 CHAIRMAN AVERY: Your time is about up. If you want
9 to finish your thought, you may do so.

10 MR. CORBER: As Mr. McCluskey pointed out, these Section
11 208(c) rights are inseverable from the regular route operations.

12 I would point out the additional language in 1(a)(4), that
13 is, transportation in the course of operations over a regular
14 route. This is not transportation over a regular route; it
15 is transportation in the couse of operations over a regular
16 route.

17 What I am saying is that I think that 1(a)(4), the excep-
18 tion there clearly covers the type of transportation which
19 was supplied in this case.

20 But I would also assert that the transportation is
21 excluded from the Compact under the language of Section 1(a).

22 Thank you.

23 CHAIRMAN AVERY: Thank you, Mr. Corber.

24 Mr. Davis, you have fifteen minutes.

25 MR. DAVIS: Thank you, sir.

REBUTTAL ARGUMENT OF MANUEL J. DAVIS

MR. DAVIS: I believe it is important, Mr. Avery, that you have brought to your attention facts which are discussed in the respective briefs, namely that it is not the only issue involved here with respect to facts that the people stay overnight in a given hotel or motel.

I invite your attention to the fact that these people when they are delivered here to the District of Columbia then proceed to let's say the Smithsonian Institute where they get off of this bus, they visit the Institute, they get then back on the bus, they then go to another, let's say the Lincoln Memorial, get off of the bus, visit the Lincoln Memorial. They may have lunch, they then get back on the bus and go somewhere else.

Now this is what these people contend is strictly not intra-District service. They say because these people came from New Jersey or Pennsylvania and are going to spend the night in a hotel here and go back to that point, that is strictly an interstate movement even though these people did all the things to which I just referred.

I think it is important that you realize that these are equally as much facts involved in this situation as is sleeping in a given motel.

CHAIRMAN AVERY: Let me ask you to try to define with you, Mr. Davis, where you do draw the line on that.

1 For instance -- I mean take it seems to me the extreme
2 on one side: A bus is on route -- a chartered bus is on
3 route from New Jersey to Richmond and goes through the District
4 of Columbia and they stop to let people go to the bathroom at
5 a restaurant or gas station in the District of Columbia. People
6 get off the bus, do what they have to do, get back on and go
7 on. Is that a break that would constitute -- then make it
8 transportation between points in the District which would
9 require them to get a certificate?

10 MR. DAVIS: No, sir, it would not.
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1 CHAIRMAN AVERY: All right, let me go one step further.
2 They make one stop there, they come in and stop at the gas
3 station right at the end of the Baltimore-Washington Parkway
4 there and do that. Then they proceed through the District.
5 By that time it is getting around lunch time, so they decide
6 to stop at a restaurant on the other side of town, also still
7 in the metropolitan district, and they have lunch. So that
8 they have made two stops in the District, and then they get
9 on the bus and they proceed to Richmond.

10 Does that require certification?

11 MR. DAVIS: No, sir, it does not, in my opinion.

12 CHAIRMAN AVERY: All right, now they make a rest stop and
13 then they stop at a motel in the District and they stay over-
14 night and they get on the bus the next day and they go on to
15 Richmond.

16 Does that require certification?

17 MR. DAVIS: I think there are plenty of cases that cover
18 these points, many, many cases.

19 CHAIRMAN AVERY: All right. Where does the line get
20 drawn that makes it transportation between points in the
21 District?

22 MR. DAVIS: When these people are told that they can get
23 off in the District for the purpose of doing a local sightseeing
24 job.

25 CHAIRMAN AVERY: I don't know what that means.

1 MR. DAVIS: They are told in advance that they can come
2 to the District here and get off of the bus and go visit our
3 monuments and museums and then come back to the bus. I would
4 say that is where the line begins.

5 I say going to a restaurant or going to a toilet to me
6 is incidental to living. But when you talk about what these
7 people are going to do here in the way of entertainment or
8 sightseeing, then I say you are performing a local service.

9 CHAIRMAN AVERY: So it turns on the representation that
10 is made to the passenger before he gets on the bus at his
11 origin point?

12 MR. DAVIS: And the actual performance.

13 CHAIRMAN AVERY: Well, then the performance of that
14 representation.

15 MR. DAVIS: That's correct, sir.

16 Now, if I may proceed, there are several other points I
17 would like to clear up.

18 This business about people being brought here by bus and
19 then there is no other bus here locally to take care of them,
20 that is not a fact. You can go up to the Sheraton Park Hotel,
21 the Shoreham Hotel, and see on given occasions 25 out-of-town
22 buses parked, and you will see D. C. Transit buses drive up
23 and perform a strictly local service. You can see that all
24 the time in this community.

25 CHAIRMAN AVERY: I do see it all the time.

1 MR. DAVIS: So that this point that Mr. Corber is making
2 here, we don't know how D. C. Transit would fit into this, we
3 do this all the time.

4 Now, it is a great thing that we do at the railroads, as
5 a matter of fact. The railroads bring the people here and we
6 perform a strictly local intra-District service, sightseeing-
7 wise, for these people, take them back to the railroad and they
8 go on about their business.

9 But it is because these particular companies have elected
10 to sell a package deal here in this District that they don't
11 want to let go. That's everything in a nutshell.

12 They have no qualm about anything else. They say "We have
13 a package deal, we have a good thing, we can cut out the local
14 man, let's do it."

15 I call your attention to the fact that when we ride a
16 bus, or take a D. C. Transit bus to New York City, we must
17 park our bus. We cannot perform a local service in the City
18 of New York.

19 MR. CUNNINGHAM: Who says so?

20 MR. DAVIS: Mr. Bell tells me so.

21 MR. CUNNINGHAM: No, no, no.

22 MR. DAVIS: That's true. Do you contest it is otherwise?

23 MR. CUNNINGHAM: I am not interested in what Mr. Bell said.

24 Who in New York City tells you you have to park your bus?

25 MR. DAVIS: I am only relating facts to you as related

1 to me. When we take our buses to New York City, our buses
2 are parked and they do not perform a strictly local service.

3 MR. CUNNINGHAM: Why not?

4 MR. DAVIS: We have been told that we cannot.

5 MR. CUNNINGHAM: By whom?

6 CHAIRMAN AVERY: By whom?

7 MR. DAVIS: By the authorities who contact us --

8 CHAIRMAN AVERY: I think what you better do, Mr. Davis,
9 is provide us -- give us a letter showing us the legal
10 authority by which that is done to you in New York. You can
11 submit that.

12 MR. DAVIS: I will be only too glad to endeavor to supply
13 it, sir.

14 CHAIRMAN AVERY: All right. Let's have that by a week
15 from today.

16 MR. DAVIS: I object to your breaking in on argument.

17 MR. CORBER: I'm sorry.

18 CHAIRMAN AVERY: Go ahead. You can make your point
19 afterwards, Mr. Corber.

20 MR. CORBER: All right.

21 MR. DAVIS: Also the question arises here about the num-
22 ber of buses that are on the streets brought in from out of
23 this jurisdiction, and that there would be no lessening of
24 buses.

25 I want to say that D. C. Transit has plenty of seats,

1 sightseeing seats available. And to the extent that it has
2 sightseeing seats available, there would definitely be a lessen-
3 ing of buses.

4 CHAIRMAN AVERY: I take it you don't quarrel with the
5 fact, Mr. Davis, that the net effect of this to the passenger
6 would be an increased cost.

7 MR. DAVIS: Well, sir, I do not know. I presume that
8 there might be a driver's cost. But in a package deal such as
9 they are selling, I call your attention to the fact that their
10 charter rates are published with the ICC. Those rates bring
11 to them a return on investment and everything else in the way
12 of profit. So it is just as profitable for them to bring a
13 charter job or sightseeing job, as you want to call it, from
14 a point in New Jersey or Pennsylvania to the District of
15 Columbia. What they would be losing would be the portion of
16 the operation solely within the District.

17 Now, to the extent of what they are charging these people
18 versus what D. C. Transit may be charging them or White House
19 or Blue Lines or someone else, I am in no position here to
20 make that comparison. So I can't say that there would be.

21 CHAIRMAN AVERY: Inherently there would be higher costs,
22 wouldn't there, because you would have a bus sitting idle for
23 a couple of days.

24 MR. DAVIS: Well, the bus would be sitting idle anyway if
25 it was staying here overnight.

1 CHAIRMAN AVERY: Then you would not only have that bus
2 sitting idle, now the bus brings them and it carries them
3 around, so the one driver performs the function. If they had
4 to turn the passengers over to the local carrier, it would
5 take two drivers and two buses to perform the same function that
6 was now being performed by one bus and one driver.

7 MR. DAVIS: That would be true in any jurisdiction in the
8 world if they were to perform a strictly local service.

9 CHAIRMAN AVERY: But the net effect would be an increased
10 cost to the passenger, wouldn't it, because that additional
11 bus and driver would entail additional costs and the passenger
12 has to bear those costs.

13 MR. DAVIS: I don't know that it would. I have no way to
14 compute --

15 CHAIRMAN AVERY: How would it not entail additional costs?

16 MR. DAVIS: Because they may charge for the local portion
17 of their operation an equivalent charge to what D. C. Transit
18 may charge. It may even be a higher charge, for all I know.

19 CHAIRMAN AVERY: You are talking about their present
20 charge?

21 MR. DAVIS: Yes. Let's say they are charged from New
22 Jersey to Washington, D. C., after performing local services,
23 then return. It includes not only the charter operation
24 between New Jersey and the District of Columbia, but it has
25 got to include the local operation, the sightseeing job they

1 perform here.

2 CHAIRMAN AVERY: Yes.

3 MR. DAVIS: Now, whether or not the combined would be
4 more or less, I couldn't say. I don't think anybody else could
5 say unless they made a comparison with D. C. Transit and other
6 sightseeing companies in this area.

7 CHAIRMAN AVERY: All right, Mr. Davis. Go ahead.

8 MR. DAVIS: I also strongly call to your attention that
9 the Compact suspends the Federal laws for the term of this
10 Compact.

11 CHAIRMAN AVERY: What do you say in that regard as far
12 as the meaning of Section 20(a)(2)? That is the one that is
13 referred to in Mr. Corber's brief. 20(a)(2). What do you say
14 as far as that is concerned, as far as the suspension of laws
15 is concerned?

16 MR. DAVIS: I say it speaks for itself that the laws are
17 definitely suspended for the life of the Compact.

18 CHAIRMAN AVERY: But the suspension "shall not affect the
19 authority of such certificate or permit holder to transport
20 special and chartered parties as now authorized by the
21 Interstate Commerce Act."

22 MR. DAVIS: Now the Compact treats this under Section
23 1(a)(4) as saying that irregular route operations are exempt.
24 It exempts that from this particular. But that is the only
25 thing that is exempt. And what they are trying to do is

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1 try to read into the exemption the charter and sightseeing
2 provisions of Section 208(c). And I say it can't be done
3 because the Congress never intended it to be done. There is
4 no provision for it.

5 If the Congress wanted to exempt something it would have
6 done just like it did to Virginia intrastate operations in this
7 area. It said the intra-Virginia operations in this area are
8 exempt.

9 Now, that is what they meant, they wrote it in. But they
10 didn't write in this Compact, nor did they write it in
11 Section 20(a)(2), nor did they write it in Section 1(a)(f)
12 of Article 12 of Title 2.

13 So I see no need to create argument. These people, in
14 order to endeavor to justify their position, are endeavoring
15 to find any kind of an argument that they can present. But I
16 say look at the record. I have quoted the record. And I
17 can't go beyond that.

18 To the extent that they keep throwing in these flies in the
19 ointment, let's say, for the purpose of creating something
20 that may stick, I say to you they have found nothing, because
21 the language of the Compact is written in certain terms. The
22 terms spell out what they are. And I say that there is no way
23 that they can get around it.

24 May I also, sir -- it was called to my attention. I refer
25 you to pages 12 through 15 of D. C. Transit's reply brief where

1 I set out my fully reply to the question which you have just
2 raised and referred to.

3 CHAIRMAN AVERY: Okay, fine. Thank you.

4 MR. DAVIS: I also refer you to pages 2 and 3 of our
5 reply brief where you will find the definitions of "Mass
6 Transit" where we endeavor to give you these definitions, to
7 spell out just what the dictionary definitions are and just
8 what they do mean when compared with the term "commuter."

9 And lastly, I call your attention to the fact that this
10 Commission does have the responsibility under the Compact with
11 respect to traffic congestion and doing its utmost to relieve
12 traffic congestion in addition to its jurisdiction over trans-
13 portation for hire.

14 And that completes my rebuttal.

15 CHAIRMAN AVERY: All right.

16 Mr. Davis, it seems clear to me that the position that
17 you are taking here would mean -- I suppose we could use the
18 word a revolutionizing of the way in which the tourist business
19 in this city is handled. It would mean a complete change in
20 the way it is done now, where these people come in and so on
21 and so forth.

22 MR. DAVIS: I think a certain portion of it. I don't
23 know how big a portion of it.

24 CHAIRMAN AVERY: I think it would affect millions of
25 people a year.

1 Is there any basis on which you can assure us that by
2 accepting this theory, that the people would get the same
3 quality of service that they are now getting?

4 MR. DAVIS: Well, as it is called to my attention, we
5 would undoubtedly render a much better service because of the
6 fact that our guides here are guides who are -- they are well
7 trained, they reside locally, and they take the examinations
8 here and they know all about the area.

9 MR. CUNNINGHAM: Well, that presupposes, does it not, if
10 the Commission finds that this type of transportation does
11 require a certificate, the Public Service and the other car-
12 riers would apply for certificates and be denied?

13 MR. DAVIS: That's right.

14 Well, not altogether. To the extent that there was a
15 need for additional carriers, I presume the Commission would
16 approve certain applications. But I don't suppose that the
17 Commission would just -- let's talk about these hundreds of
18 carriers that Mr. Corber referred to throughout the entire
19 United States that ran in a trip or two trips -- that they
20 were to be just automatically granted a certificate.

21 I think the Commission would consider the question of
22 public convenience and necessity. And to the extent that
23 public convenience and necessity demanded additional carriers,
24 I am certain that this Commission would grant certificates.
25 I just don't think it would grant them outright, nor do I

1 think they would outright deny them.

2 But I thought that Mr. Avery's question went to the fact
3 that presuming that they were to support -- the Commission was
4 to support my position, and again presuming that we were the
5 only carrier of those in the area at the present time,
6 whether the service would be better or as good. I presumed
7 that that was the situation.

8 CHAIRMAN AVERY: Mr. Corber, did you have something you
9 wanted to say?

10 MR. CORBER: Well, I would like to offer this, Mr.
11 Commission, and if it is not proper I will withdraw it.
12 But I must say that I have participated in this case on the
13 basis of the impression that D. C. Transit was urging this
14 Commission to declare Public Service subject to the Compact,
15 subject to the jurisdiction of this Commission, and therefore
16 unable to operate any charters across the borders of this
17 Metropolitan District without a certificate from this
18 Commission.

19 Now, Mr. Davis made a statement about joint arrangements
20 they apparently have now with some carriers who come into the
21 District with charters and they provide a sightseeing service.
22 There are two different types of arrangements. I think it
23 would be helpful to the Commission -- frankly, it would be
24 helpful to me in understanding this case to know just what
25 it is D. C. Transit wants to get done here; whether they want

1 to provide a sightseeing service or whether they are talking
2 about the type of jurisdictional division which requires
3 joint through route arrangements.

4 CHAIRMAN AVERY: Joint through route means where the
5 passengers would stay on the Public Service bus but there
6 would be some kind of splitting of the money with D. C.
7 Transit?

8 MR. CORBER: Well, either that or they might change
9 equipment. Some of these situations are such where the carrier
10 has to stop its service at the state line, turn the passengers
11 over to another carrier who then picks them up with another
12 bus, goes on. That would be a joint through route arrangement
13 and the kind -- the only kind that would fit into the legal
14 argument which Mr. Davis has been making.

15 MR. CUNNINGHAM: Well, I understood Mr. Davis' comment
16 about the railroad bringing people here and then D. C. Transit
17 taking those passengers on a tour was a gratuitous comment in
18 explaining a factual situation that exists. We could always
19 get into ancillary arguments as to whether or not the railroad
20 has the authority to put its own buses on.

21 I think we are starting to stray a little from the
22 jurisdictional question.

23 CHAIRMAN AVERY: Yes, my reaction is I don't see what
24 that has to do with the jurisdictional question, which is the
25 main one before us. So I think we can leave it at that.

1 Now, Mr. Davis, you will submit to us then the legal
2 basis on which you have to leave your buses in New York City
3 and you are not able to transport people around the city. You
4 will do that by next Friday. And you will submit copies of
5 whatever you submit to us to the Respondent and the Intervenor.

6 And if you have anything -- let's don't reopen the whole
7 thing. If you have anything to add specifically on the New
8 York law as it is exposed by Mr. Davis, you can by the follow-
9 ing Wednesday submit something very brief on that.

10 MR. DAVIS: I may even get it from Mr. Corber.

11 But I think too, if I may, sir, it might be of interest
12 to Mr. Corber: Perhaps he is not familiar with page 16 of the
13 Compact, Section 7(a), which provides, "In order to encourage
14 and provide adequate transit service on a metropolitan
15 district-wide basis, any carrier may establish through routes
16 and joint fares with any other carrier subject to this
17 jurisdiction."

18 MR. CORBER: I am aware of that, but you will find that the
19 Interstate Commerce Commission allows that only on regular
20 route operations, scheduled service.

21 CHAIRMAN AVERY: Fine.

22 Well, I guess then that completes the argument unless
23 anybody else has got some procedural or other type of matter
24 to add.

25 MR. DAVIS: May I ask one question. In the event in my

1 writing to these people in New York it takes longer than a
2 week, I have no objection to so informing, but counsel could
3 be relatively sure that I would do it ex post. I may be held
4 up.

5 CHAIRMAN AVERY: I don't see why you can't get the
6 information in a week, but you know if some bona fide reason
7 comes up why you can't get the information in a week -- it seems
8 to me Mr. Langerman can go to the library and look it up this
9 afternoon.

10 MR. DAVIS: I think you need more than that, sir, to
11 satisfy your inquiry.

12 MR. CUNNINGHAM: Somebody obviously already told you you
13 can't do something, and I think you should have in writing in
14 your own office the basis for it, Mr. Davis. Now it was either
15 the New York Public Service Commission or the Port Authority
16 or something.

17 CHAIRMAN AVERY: I would assume you could get it within
18 a week. If you can't and you can spell out the bona fide
19 reasons why you can't, then obviously we will give you more
20 time.

21 MR. DAVIS: I hope it is there. If it does exist it was
22 prior to my coming to D. C. Transit.

23 CHAIRMAN AVERY: It seems inconceivable to me that it
24 would take you more than a week to find out what is the law in
25 New York City.

1 MR. DAVIS: If all you want to know is the law, we can
2 do that today.

3 CHAIRMAN AVERY: That is all I want to know, is the law.
4 That is what I told you I want to know, what is the legal basis
5 for your being denied the right to operate your buses in New
6 York City.

7 Thank you very much.

8 (Whereupon, at 11:34 a.m., the oral argument in the
9 above-entitled matter was closed.)
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In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,904

D. C. TRANSIT SYSTEM, INC., a corporation
Petitioner

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Respondent

and

PUBLIC SERVICE COORDINATED TRANSPORT,
Respondent-Intervenor

and

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,
Respondent-Intervenor

BRIEF FOR PETITIONER

United States Court of Appeals
for the District of Columbia Circuit

FILED JUN 23 1969

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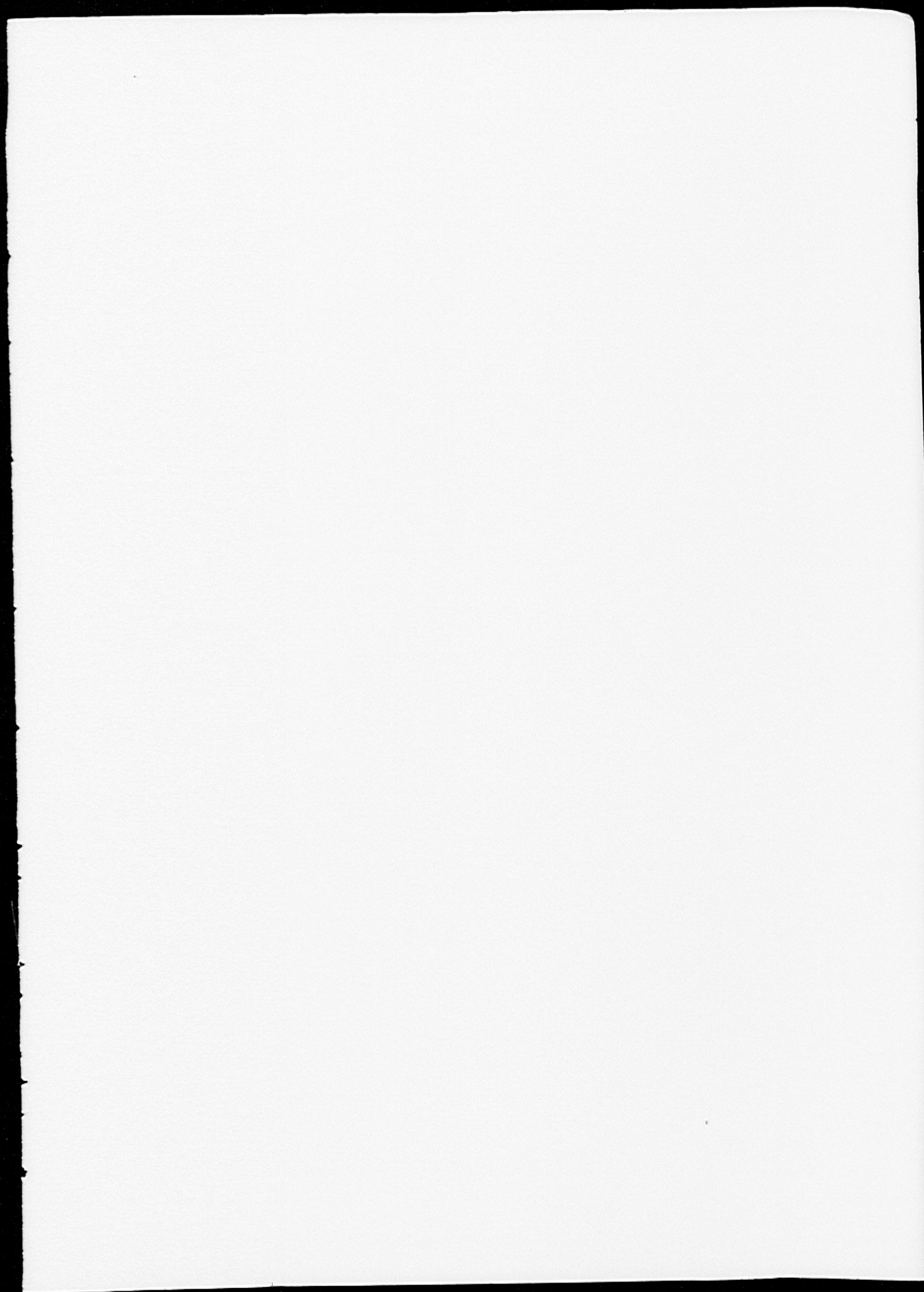


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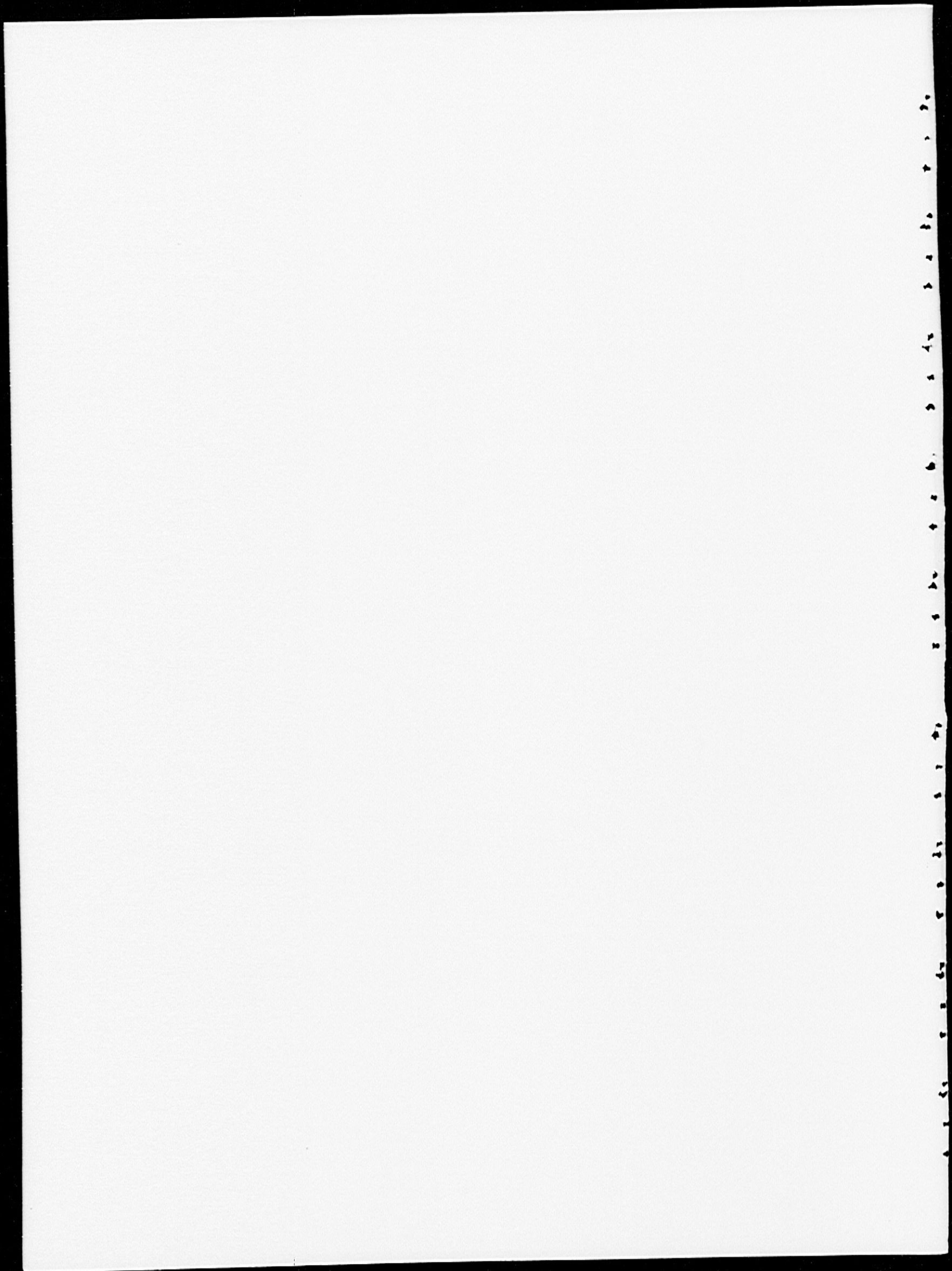
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In The
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D. C. TRANSIT SYSTEM, INC., a corporation,
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v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Respondent

and

PUBLIC SERVICE COORDINATED TRANSPORT,
Respondent-Intervenor

and

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,
Respondent-Intervenor

BRIEF FOR PETITIONER

STATEMENT OF THE ISSUES PRESENTED*

I. Whether Public Service Coordinated Transport conducted transit operations between points in the Washington Metropolitan Area Transit District which are subject to the jurisdiction of the Washington Metropolitan Area Transit Commission.

* This matter has not been before this Court in any previous proceeding.

II. Assuming that Public Service Coordinated Transport has conducted operations subject to the jurisdiction of the Washington Metropolitan Area Transit Commission, has the Washington Metropolitan Area Transit Commission failed to exercise its proper jurisdictional authority by refusing to require Public Service Coordinated Transport to obtain a certificate of public convenience and necessity for the said operations?

JURISDICTIONAL STATEMENT

This is an appeal from a final order of the Washington Metropolitan Area Transit Commission which Commission was created under the provisions of the Washington Metropolitan Area Transit Regulation Compact. Public Law 86-794, 74 Stat. 1031 (1960), 1 D. C. Code 1410-16 (1961 Ed.).

Title II, Article XII, Section 17 (a) of the aforesaid Compact provides for a review of any order of said Commission to this Court.

STATEMENT OF THE CASE

On March 2, 1967, the D. C. Transit System, Inc. (Transit) filed a formal complaint against respondent-intervenor, Public Service Coordinated Transport (Public Service), alleging, inter alia, that the latter was performing passenger transportation for hire between points in the District of Columbia without appropriate authority from the Washington Metropolitan Area Transit Commission (Commission).

REFERENCES AND RULINGS

The following two orders of the Washington Metropolitan Area Transit Commission set forth the basis of the Petition presented for review by this Court.

1. Order No. 897, served December 18, 1968, dismissing Formal Complaint No. 17. Appendix K, pages 135 - 139.

2. Order No. 925, served February 17, 1969, denying D. C. Transit System, Inc's application for reconsideration of Order No. 897. Appendix O, pages 166 - 167.



On March 17, 1967, the Commission by Order No. 688 extended the time in which Public Service could file an answer until April 21, 1967. On April 20, 1967, Public Service replied to the complaint, denying that it was engaged in transportation subject to the jurisdiction of the Commission. On May 10, 1967, the National Association of Motor Bus Owners (NAMBO) filed a Petition to Intervene, and on April 18, 1967, by order of the Commission, NAMBO was permitted to intervene.

A stipulation of facts was entered into by Transit and Public Service, dated August 4, 1967. The stipulation shows that Public Service is the holder of a certificate from the Interstate Commerce Commission authorizing the interstate transportation of passengers by motor bus between points in New Jersey, and points in New York, Pennsylvania, or Delaware. It further stipulates that Public Service holds certificates from the Interstate Commerce Commission entitling it to transport passengers in special operations from points in New Jersey and Pennsylvania to many points in the United States, including the District of Columbia, and return.

A typical movement of which complaint was made was described in the stipulation. It is a chartering party originating in Linden, New Jersey, and going to Washington, D. C. and return. It commenced on October 14, 1966 and terminated on October 16, 1966. The members of the chartering party stayed overnight in hotel accommodations in Washington and during their stay in the metropolitan area were taken to points of historical interest in the District of Columbia and Arlington and Mount Vernon in Virginia. The same bus of Public Service was used for all the transportation.

It was further stipulated that the Public Service bus which provided service for the tour was licensed by the Public Service Commission of the District of Columbia to comply with the rules and regulations of that Commission.^{1/} It was also agreed that by entering into the Stipulation, Public Service did not submit to the jurisdiction of the Commission. The parties further agreed to file briefs in support of their respective parties, Transit's brief being due on or before September 3, 1967. Public Service's brief was due on or before October 2, 1967 and Transit's reply brief was due on or before October 16, 1967.

Transit's brief was filed September 1, 1967 and Public Service filed a Motion to extend its time to file its brief and by Order 742 of the Commission served September 29, 1967, the time was extended until October 6, 1967. All remaining briefs were filed within the stipulated time and on November 16, 1967, Public Service and NAMBO filed a joint motion for Oral Argument. Commission Order No. 763, served December 12, 1967, granted the motion for oral argument and oral arguments were entertained by the Commission, January 26, 1968. Commission Order No. 397, served December 18, 1968, dismissed Formal Complaint No. 17.

Transit filed its Application for Reconsideration January 16, 1969, and separate replies were filed by Public Service and NAMBO January 29, 1969. Transit's Answer to the Replies was filed January 31, 1969, and by Order No. 925, served February 17, 1969, the Commission denied the Application for Reconsideration.

^{1/} License is required under such rules and regulations if the vehicle in question is operated for sightseeing purposes in the District of Columbia for more than fifteen calendar days in any license year.

At this point and within the prescribed statutory period, Transit filed its Petition for Review of Order No's 897 and 925. The record has been filed by the Commission and Transit now comes forward to present its case.

ARGUMENT

I

PUBLIC SERVICE COORDINATED TRANSPORT HAS CONDUCTED TRANSIT OPERATIONS BETWEEN POINTS IN THE WASHINGTON METROPOLITAN AREA TRANSIT DISTRICT WHICH ARE SUBJECT TO THE JURISDICTION OF THE WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION.

- A. THE WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION ERRED IN FAILING TO FIND THAT THE TRANSPORTATION CHALLENGED BY D. C. TRANSIT SYSTEM, INC., IN THIS PROCEEDING WAS WITHIN THE SCOPE OF ITS JURISDICTION AND ITS DECISION IS INCONSISTENT WITH THE INTENT OF CONGRESS IN ESTABLISHING THE WASHINGTON METROPOLITAN AREA TRANSIT REGULATION COMPACT.

Every brief writer, every petitioner, and every lawyer looks for the comparison, the case in point, the precedent, the before situation. However, there is only one Washington, D. C. in the United States. It cannot be compared to any other body; state, municipal or corporate or legislative, judicial or executive. Washington, D. C. is a child of Congress and has never been weaned from its mother. The Washington Metropolitan Area Transit Commission was created to help care for this child and the surrounding area which had become its playground. Let us now compare the Washington Metropolitan Area

Transit District* (Metropolitan District) or the Commission with States or their regulatory bodies. No matter how you look at the problem the situation is always the same. This is the Federal Government and the problems and solutions are unique. It is true that a State cannot interfere with the movement of interstate commerce which is regulated by the Interstate Commerce Commission; however, in the instant proceeding the regulatory body (Washington Metropolitan Area Transit Commission) is not interfering with the Interstate Commerce Commission - it is the equal of the Interstate Commerce Commission. Congress created the Commission with full authority to regulate the transportation of people for hire in its own created city and one cannot read between the lines in an effort to avoid this responsibility. As hereinafter stated, the Compact imposes the obligation on the Commission to regulate the transportation in question in this proceeding, and the Commission erred in failing to assume this responsibility.

Both Public Service and NAMBO have relied heavily upon the decision rendered by the United States Supreme Court in City of Chicago vs. Atchison, T. & S.F. Ry. Co., 357 U.S. 77 (1958). In that particular case a municipal ordinance was held invalid as conflicting with the

* Title I, Article I, defines the Washington Metropolitan Area Transit District to "embrace the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties and that portion of Loudon County, Virginia, occupied by the Dulles International Airport and the counties of Montgomery and Prince Georges, in the State of Maryland and political subdivisions of the State of Maryland located within such counties, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties, cities and airport."

Interstate Commerce Act which regulated rail carrier transfer service between terminals. That situation is easily distinguished from the present proceedings in that the regulatory body involved herein (the Washington Metropolitan Area Transit Commission) was created by a three-fold compact which provided a regulatory body in place of the Interstate Commerce Commission and not one in addition thereto. A single agency (the Washington Metropolitan Area Transit Commission) was created as a replacement for the four commissions which were exercising jurisdiction thereover in piece-meal fashion.^{2/}

The Commission was given what is tantamount to plenary regulatory authority. Article II of the Compact describes such authority in the following terms:

The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis without regard to political boundaries within the Metropolitan District, as set forth herein.

All Federal laws inconsistent with or in duplication of the Commission's exclusive authority were suspended as provided in Section 3 of the legislation approving the Compact, 74 Stat. 1050, and implementing Article VIII.^{3/}

^{2/} The Interstate Commerce Commission regulated interstate commerce while the Public Utilities Commission of the District of Columbia, Public Service Commission of Maryland, and State Corporation Commission of Virginia regulated local commerce.

^{3/} The exclusive jurisdiction which the Congress conferred to the Washington Metropolitan Area Transit Commission is fully described in Appendix "A" hereto consisting of several excerpts taken from the House and Senate committee reports accompanying H.J. Res. 402, the bill enacted as the Act of September 15, 1960, Public Law 86-794.

The United States Court of Appeals for the District of Columbia, in D. C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission, et al., Case No. 20,183, decided March 7, 1967, petition for rehearing en banc denied April 13, 1967, has described the Commission's exclusive authority as follows:

When Congress consented to the Compact in 1960, it elected to treat the metropolitan area of Washington as a geographical unit, with the Commission as the central licensing and rate-making authority. No one could engage in the transportation covered by the Compact except upon its terms; and these included the issuance by the Commission of a certificate of public convenience and necessity.

Under these circumstances, the sole question for determination herein is whether the operation being conducted by Public Service between points within the Metropolitan District constitutes "transportation under the Compact" which is subject to the jurisdiction of the Commission notwithstanding the fact that such operation is part of a movement commencing and ending at a point outside the Metropolitan District. In this connection, in passing, the United States Court of Appeals for the Fourth Circuit, in Alexandria, Barcroft & Wash. T. Co. v. Washington M.A.T. Com'n., 323 F2d 777, 780, (1963), after noting that the rules and decisions of the Interstate Commerce Commission "cannot generally be used to show the path the Transit Commission must follow", recognized the "right of the Transit Commission to establish, within statutory limitation, new rules based on its own conception of the needs of mass transit of persons in this highly populated area". The language of the Court was more fully expressed as follows:

"The impact of rules and decisions of such public bodies as 'stare decisis' for the present Transit Commission is, therefore, limited. These decisions, and those of reviewing courts, may aid in the search for the meaning of a statutory phrase and, perhaps, help point up the outer limits of administrative discretion; but they 'cannot generally be used to show the path the Transit Commission must follow' in determining the requirements of the public convenience and necessity.

(2) That this is so is made apparent by Title II, Article XII, § 21, of the Compact which makes prior decisions of the Interstate Commerce Commission and the local commissions effective and enforceable only until the Transit Commission provides otherwise. Clearly this implies the right of the Transit Commission to establish, within statutory limitations, new rules based on its own conception of the needs of mass transit of persons in this highly populated area." (Emphasis supplied)

Notwithstanding the Commission's determination hereinabove stated, Transit herein below sets forth that portion of the statutory history of the Compact which relates to the said subject matter and definitely proves that it was the intent of the framers of the Compact to place jurisdiction in this Commission over local sightseeing services within the Metropolitan District that were part of a movement of passengers originating at a point beyond the Metropolitan District. The legislative history of the Compact clearly establishes the Commission's jurisdiction over such local operations. By Public Law 24, 84th Congress, 69 Stat. 28, 33 (Second Supplemental Appropriations Act, 1955), the National Capital Planning Commission and the National Capital Regional Planning Council were authorized "to jointly conduct a survey of the present and future mass transportation needs of the National Capital region". Such survey, submitted on July 1, 1959,

gave particular emphasis to a 1955 report prepared by a special consultant, Mr. Jerome M. Alper, entitled "Transit Regulations for the Metropolitan Area of Washington".

Reproduced on Pages 43-101 of the Hearings Before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, 86th Congress, First Session of H.J. Res. 402, Part I, August 26, 1959, is a report covering the investigation and testimony relating to the Compact which, in substance, reveals that the drafters of the Compact intended to have the Commission regulate the operations of the nature involved in this proceeding. The special significance of this report is noted on Page 108; and the language therefrom, hereinafter quoted, is found on Page 81.

This commission would have exclusive jurisdiction over the movement of passengers for a charge between any points in the district by motor carrier or street railway. Both contract and common carriers performing such transportation would also be subject to the jurisdiction of the compact commission. No exemption would be afforded any motor carrier by virtue of the fact that the transportation performed within the district is performed in the course of an operation over a route, the major portion of which is outside of the district, and the carrier performing such transportation is subject to the jurisdiction of the Interstate Commerce Commission or any other agency of the federal government having jurisdiction over interstate commerce. Sightseeing or charter service within the metropolitan district performed by a carrier engaged in transportation subject to the compact law would also be subject to the jurisdiction of the compact commission. School buses and motor carriers operated by the federal government, the signatory States, or any political subdivision thereof, and any transportation by water would be exempt from the jurisdiction of the compact commission. Taxicabs would be subject to the jurisdiction of the compact commission only for interstate rate-making purposes. (Emphasis supplied)

The broad nature of the Commission's jurisdiction contemplated by Mr. Alper was incorporated into Section 1 (a) of Article XII of the Compact as set forth in H.J. Res. 402 of the 86th Congress. With respect to operations within the Metropolitan District integrally related to operations outside thereof, the language of the Compact differed from Mr. Alper's thinking. Whereas Mr. Alper would have subjected all such operations to the Commission's jurisdiction, Section 1(a)(4), as enacted, provided a limited exemption therefor^{4/} in the following terms:

This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District...except -
(4) transportation performed in the course of an operation over a regular route, the major portion of which is outside the Metropolitan District except where a major portion of the passenger traffic begins and ends within the Metropolitan District. (Emphasis added)

The language of such exemption caused the Interstate Commerce Commission serious problems which were subsequently resolved by an amendment to Section 1(a)(4), as provided in Section 5 of the consent^{5/} legislation, 74 Stat. 1051. In its ultimate form, however, the exemption to Section 1(a)(4) was still confined to regular route operations.

To summarize, then, the legislative history of the Compact makes it quite clear that the sightseeing services performed by Public Service in the Metropolitan District, as part of an irregular-route

^{4/} Page 5 of the aforementioned transcript of the August 26, 1959, hearing on H. J. Res. 402.

^{5/} See pages 38-40 and 50-51 of House Report No. 1621, 2nd Session, accompanying H.J. Res. 402 (May 18, 1960).

special or charter operations commencing and terminating at a point outside the Metropolitan District, are subject to regulation by the Commission.

In view of the fact that sightseeing operations in the Metropolitan District performed by carriers domiciled in the Metropolitan District are subject to regulation by the Commission,^{6/} it is only reasonable that the drafters of the Compact intended that the competitive operations of carriers domiciled outside the Metropolitan District also be subject to such regulation.

To the extent that uncertificated carriers such as Public Service can provide such tourists with similar services, operating over the same streets and visiting the same points of interest, destructive competition results which not only threatens the continued survival of the certificated carriers but also substantially curtails the uniform, orderly system of regulation envisioned by the enactment of the Compact.

- B. THE COMMISSION'S DECISION IS CONTRARY TO THE INTENT OF ARTICLE XII, SECTIONS 1. (a), 1. (a)(4), and 20 (a)(2) OF THE WASHINGTON METROPOLITAN AREA TRANSIT REGULATION COMPACT.

Article XII, Section 1(a) of the Compact defines the transportation covered as follows:

^{6/} See, for example, Certificate No. 1 issued to White House Sightseeing Corporation which authorizes sightseeing or pleasure tours, in charter or special operations, from points within the Metropolitan District to points within the Metropolitan District. The following decisions, to name a few, affirm the Commission's jurisdiction over such sightseeing operations: Alexandria, Barcroft & Wash. T. Co. v. Washington M.A.T. Com'n., supra: Gadd v. Washington Metropolitan Area Transit Com'n., 347 F2d 791 (D. C. Cir. 1965); Holiday Tours, Inc. v. Washington Met. Area Trans. Com'n., 352 F2d 672 (D. C. Cir. 1965).

This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service except -

(1) - (3) (not relevant)

(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact... (Emphasis supplied)

In effect this Section applies to any transportation performed within the Metropolitan District, whether or not commencing and terminating at a point therein, except insofar as such transportation is part of a regular-route operation between a point in the Metropolitan District and a point outside thereof. Accordingly, the local sightseeing operations being performed by Public Service in and about the District of Columbia and nearby Arlington and Mount Vernon, Virginia, as part of irregular-route special and charter operations beginning and ending at points in New Jersey and Pennsylvania, require certification from the Commission pursuant to the provisions of Section 4 of Article XII of the Compact.

Each year millions of tourists come to Washington, D. C. to visit the many national monuments, museums, and memorials located in the area. According to official estimates, some 15 million visitors were expected in 1967 and such figure may grow to 35 million by 1980. ^{7/}

^{7/} Government Exhibit No. 7, pages 2-3, in Washington Metropolitan Area Transit Commission, et al. v. Universal Interpretive Shuttle Corporation, supra.

These tourists are the patrons to whom the sightseeing carriers certificated by the Commission orient their services.

In addition to the need to maintain a uniform system of regulation, there is another compelling reason for the drafters of the Compact having conferred to the Commission jurisdiction over the involved operations. The Commission has been delegated the responsibility to alleviate traffic congestion in the Metropolitan District, as provided in Articles II, V, and X of the Compact. With hundreds of carriers such as Public Service providing tourists to the Nation's Capital with sightseeing services to the myriad local points of interest, the traffic congestion in this area has increased tremendously.^{8/} Accordingly, the only way the Commission effectively can discharge its mandate to alleviate such congestion is to exercise jurisdiction over such carriers.^{9/}

Some indication of the volume of the sightseeing operations in the Metropolitan District being conducted by carriers such as Public Service is readily available from an observation of the numerous out-of-state buses encircling the White House daily during the peak tourist

^{8/} Congressional concern over the growing traffic congestion in the Washington Metropolitan Area was highlighted by Congressman Broyhill and Senator Robertson in the debates on H.J. Res. 402. See Congressional Record, 36th Congress, 2nd Session, Volume 106, Part 9, p. 11739, and Part 14, p. 12624.

^{9/} The following language of Article XI of the Compact would seem to be particularly relevant to the determination of such jurisdiction: "In accordance with the ordinary rules for construction of interstate compacts, this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof."

periods. Most of these buses operate in the District of Columbia pursuant to "occasional certificates" issued by the Public Service Commission. Under the District's General License Law out-of-state carriers may engage in so-called "occasional" sightseeing operations for fifteen calendar days by obtaining free certificates from the Public Service Commission, with no limitation upon the number of vehicles that may be certificated. After its fifteen calendar days have been used up, an out-of-state carrier continuing to perform local sightseeing operations must pay a license tax of \$100 per annum ^{10/} for each vehicle used.

It seems curious in passing that Public Service should, on the one hand, comply with the aforementioned District law and, at the same time, ignore the Compact law vesting paramount jurisdiction over ^{11/} transportation in the District in the Commission.

One further comment is warranted. Section 20(a)(2) of Article XII of the Compact provides:

Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the

^{10/} See D. C. Code (1961 Ed.) §47-2331(c) and (h). Article VII of the Compact specifically reserves the power of the signatories to "levy, assess and collect franchise or other similar taxes, or fees for the licensing of vehicles and the operation thereof."

^{11/} According to records of the Public Service Commission, the Public Service Commission licensed 13 vehicles in the 1966 license year and 14 vehicles in the 1965 license year.

Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act. (Emphasis supplied)

This provision in no way derogates from the jurisdiction of the Commission over transportation performed in the Metropolitan District. It was intended solely to preserve the authority of local carriers such as Transit, Washington, Virginia & Maryland Coach Company, Inc., WMA Transit Company, Inc., Alexandria, Barcroft and Washington Transit Company and Atwood's Transport Lines, Inc., whose regular-route interstate operations in the Metropolitan District are subject to the jurisdiction of the Commission, to engage in so-called "incidental charter operations" extending beyond the confines of the Metropolitan District notwithstanding the suspension of their underlying Interstate Commerce Commission certificates.^{12/} Section 20 (a)(2) was not intended to apply to carriers such as Public Service who have no regular-route operations in the Metropolitan District and whose Interstate Commerce Commission certificates have not been suspended.

Such intent is evidenced by the following legislative comments on H.J. Res. 402 which the Interstate Commerce Commission submitted

^{12/} Under Section 202 (c) of the Interstate Commerce Act, 49 U.S.C. 302 (c), and regulations promulgated thereunder by the Interstate Commerce Commission, certificated regular-route carriers may transport special or chartered parties from points on their regular routes, or within the territory served thereby, to any point in the United States. By Act of November 10, 1966, 20 Stat. 1521, such "incidental" authority has been abolished as to certificates issued pursuant to applications filed after January 1, 1967

to the House Judiciary Committee by letter dated September 16,
^{13/}
1959:

The exceptions in the proviso of section 20 (a)(2) presumably are intended to preserve the special and charter rights which each holder of a regular route passenger certificate issued under the Interstate Commerce Commission received under section 208 (c) of the act... Without some such provision the suspension of the ICC certificate might be deemed to suspend also the special and charter rights.

Throughout the instant proceedings, Public Service has maintained that the Commission is only concerned with "mass transit" and regular-route operations, and therefore, having no jurisdiction over charter or special operations. Public Service points to the repeated references in the consent legislation to the words "mass transit" which it defines to mean the "movement of great numbers of passengers on a daily basis within a congested area to and from places of employment. In effect Public Service equates "mass transit" with "commuter service".

Public Service's argument is fallacious for several reasons. First, from a strictly semantic standpoint, the following definitions are taken from Websters New International Dictionary, Second Edition, Unabridged:

"mass" - "Of, pert. to, or characteristic of a mass or the masses (see 3d MASS. 6)"

"3d MASS. 6" - "With the, the general body of mankind, a race, a nation, etc.; pl., the great body of the people, as contrasted with the classes; the populace"

"transit" - "act or process of causing to pass;
conveyance; carriage"

"commuter" - "one who travels back and forth
between a city and an outside residence"

From the foregoing it would seem to be reasonably clear that the words "mass transit" and "commuter" cannot be equated.

Secondly, the language of the consent legislation refers to "transit" generally as well as to "mass transit". In the fourth "whereas" clause of the preamble to the consent legislation the Congress set forth the purpose of the Compact as follows:

the establishment of a single organization as
the common agency of the signatories to regulate
transit and alleviate traffic congestion.
(Emphasis added)

Numerous references to "transit" generally are also found in the legislative history. See, for example, pages 5 through 7 of the House Report No. 1621 of the 86th Congress accompanying H.J. Res. 402 (May 18, 1960). Certainly, all these references to the word "transit" without modification suggest that the Congress was concerned with public transportation generally and not just the "commuter" aspect thereof.

Thirdly, the word "mass transit" does not appear anywhere in the language of the Compact. Almost all references are to "transit" generally, as, for example, in Articles II, V, and X. Furthermore, in describing the operations specifically intended to be covered by the Compact, Section 1(a) of Article XII refers very broadly to "transportation" and not anything more restrictive such as "commuter" or "mass transit".

Fourthly, the Commission has always asserted regulatory authority over operations that are non-commuter and irregular route in nature. The "grandfather" certificates of public convenience and necessity that the Commission issued to Blue Lines, Inc., the Gray Line, Washington Sightseeing Tours, Inc., and White House Corporation, to name a few, authorized either charter or special operations.

Lastly, and most significantly, the courts have consistently recognized the authority which the Compact has conferred to the Commission to regulate special and charter operations. The following decisions affirm such authority:

Alexandria, Barcroft & Wash. T. Co. v. Washington M.A.T. Com'n., 323 F2d 777 (1963); Gadd v. Washington Metropolitan Area Transit Com'n., 347 F2d 791 (1965); Holiday Tours, Inc. v. Washington Met. Area Trans. Com'n., 352 F2d 672 (1965); and D. C. Transit System, Inc. v. Washington Met. Area Trans. Com'n., 366 F2d 542 (1966).

Public Service has asserted that the Compact generally was intended to apply to non-commuter operations, Section 1(a)(4) of Article XII thereof would in effect except its operations from the Commission's jurisdiction. Public Service alleges that although the reference in Section 1(a)(4) is to "regular route" operations only, incidental charter operations performed under Section 208(c) of the Interstate Commerce Act are also intended to be embraced thereby since, under ICC decisions, incidental charter rights are integrally related to and not severable from the underlying regular-route rights. Such argument totally ignores the reasonably clear language of Section 1(a)(4) as well as the legislative history thereof.

Beginning with the actual language of Section 1(a)(4), there is absolutely no suggestion that such incidental charter operations are to be excepted from the Commission's jurisdiction. Twice Section 1(a)(4) specifically describes the operations covered thereunder as "regular route" in nature. Is there any reason to doubt that the Congress had a specific purpose in mind in employing such specific references? If the Congress wanted to include irregular-route operations within the scope of the exception to Commission jurisdiction, would it not surely have used language to the effect "transportation performed in the course of an operation over a route, regular or irregular,"?

Whether defined in a technical or non-technical manner the word "regular" clearly restricts the type of operation permitted without Commission certification. Websters New International Dictionary, Second Edition, Unabridged, defines the adjective "regular" as follows:

"Steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variation; returning or recurring at stated or fixed times or uniform intervals;"
(Emphasis supplied)

The emphasis here is on an operation over a given course and on fixed intervals. Furthermore, as noted by the Commission in the technical definition of a regular-route operation stated in its Regulation 51-04:

The term 'Regular Route Operation' means scheduled service over designated streets and highways between fixed termini... (Emphasis supplied)

In short the definition of "regular route" clearly does not describe an incidental charter operation which is not limited to fixed termini, which does not run at stated or scheduled times, and which does not follow a designated or prescribed course.

It is also most noteworthy that the Interstate Commerce Commission has abolished the policy of granting incidental charter rights and has now separated regular-route operations from such "irregular-route" operations.

C. THE COMMISSION'S DECISION IS CONTRARY TO THE FACTS STIPULATED BY THE PARTIES TO THIS PROCEEDING.

In the first full paragraph on page 3 of Order No. 897, the Commission makes the following remarks:

"...Taking up the statutory problem first, the question we must resolve is whether the framers of the Compact intended that groups coming to Washington by charter bus who wish to engage in local sightseeing as a group must make use of a local certificated carrier rather than the charter operator who brought them here. We find nothing whatever in the statutory history of the Compact which indicates such an intent."

Is it not possible for another carrier to be certificated in addition to a local carrier? The Compact establishes a single regulatory unit to govern in place of the pre-existing four regulatory bodies. It has exclusive authority (with certain exceptions, not applicable here) within the Metropolitan District. Its authority is set forth in the Compact in great detail and with specific words. The language is clear and spelled out in detail. There is no need to search for an "intent" to make "out of town" (meaning outside the Metropolitan District) charter groups use local certificated carriers. The Compact creates the authority in the Commission to regulate such traffic and if the "out of town" carrier cannot qualify for a certificate, then in that event, a certificated carrier must be used.

The Commission describes itself as a unit comparable to a State. Is it not true that a State can regulate commerce within its jurisdiction, either jointly with the Interstate Commerce Commission or singularly by itself? Does not Public Service maintain, in addition to its interstate Commerce Commission authority, intrastate authority, by certification, in areas where it performs a similar local service?

The facts in this case were stipulated to by the parties and were believed at least by the parties hereto, to be clearly set forth in order that the Commission would be spared the need to get into mass plowing distinctions as to when a stop becomes sufficient to invoke its jurisdiction. The Commission's determination set forth at the top of page 4 of its Order No. 397 that:

"Nor need we get into hairsplitting distinctions as to when a stop becomes sufficient to invoke our jurisdiction."

begs the issue in this proceeding. The length of time of the stop in the Metropolitan District and the local services being rendered by the non-Commission certificated carrier, within the said stop or lay over period in the Metropolitan District is one of the fundamental factors that should be considered. If Public Service had stopped at a local motel and performed no local sightseeing services while so stopped or laying over, we would not have an issue. But as long as the facts in this case reveal that the said stop or lay over in the Metropolitan District was solely for the purpose of performing a pre-arranged sightseeing tour in the Metropolitan District, we do have an issue.

The Commission's conclusion set forth at the top of page 4 of its Order 397 ignores the fact that the passengers originating in

Public Service's trip from the State of New Jersey stayed over at a motel before and/or after arriving in the Metropolitan District. The "stop", could be for minutes, days or weeks. Where do you draw the line?

It is admitted that during this "stop" or lay-over, Public Service performed a wholly local intra-Metropolitan District sight-seeing service. Authority to render this wholly local service must rest with some governmental agency, whether it be the local state, Federal or by statute. Surely, the Interstate Commerce Commission gave Public Service no local authority. The authority rests solely with this Commission by virtue of the Compact. The Commission cannot ignore its authority; it cannot escape its responsibilities by refusing to assume its regulatory powers. It must regulate the commerce within its jurisdiction.

II

THE COMMISSION'S DECISION DISREGARDS ITS OBLIGATION SET FORTH IN ARTICLE II OF THE COMPACT.

When Congress established the Commission it was looking into the future and the potential growth of the Metropolitan District. Its intent to give broad powers to the Commission is spelled out in part in Article II of the Compact which reads in part as follows:

"...The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District, as set forth herein."

The Commission has closed its eyes to the governing statutes, rules and regulation, and applicable laws and its ears to the intent of Congress. It refuses to see or hear the bold faced truth of this matter. Notwithstanding the practicabilities involved in the regulation of thousands of buses and millions of tourists, the Commission is dressed with the necessary jurisdiction and it must assume its duties and administer the necessary authority. If a change in the Compact is desirable, it cannot be accomplished by the Commission ignoring its responsibilities; such a change can only be accomplished by new legislation. Until such a change is brought about through the enactment of new laws, the Commission must exercise its authority and regulate the transportation of chartered groups coming within the Metropolitan District.

CONCLUSION

Wherefore, D. C. Transit System, Inc., respectfully prays that Order No. 897 and Order No. 925 of the Washington Metropolitan Area Transit Commission be reversed and this matter be remanded to the Washington Metropolitan Area Transit Commission and that the Washington Metropolitan Area Transit Commission, pursuant to Section 13(c) of the Washington Metropolitan Area Transit Regulation Compact, be directed to compel Public Service Coordinated Transport and its employees to cease and desist from engaging in any unauthorized operations or transportation subject to the provisions of Article XII, Section 1(a) and 4(a) of the Washington Metropolitan Area Transit

Regulation Compact and to comply with the certification provisions of Section 4 of the said Washington Metropolitan Area Transit Regulation Compact.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 22,904

D. C. TRANSIT SYSTEM, INC.,

Petitioner

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,

Respondent

and

PUBLIC SERVICE COORDINATED TRANSPORT,

Respondent-Intervenor

and

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,

Respondent-Intervenor

PETITION TO REVIEW ORDERS OF THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

BRIEF FOR RESPONDENT

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 23 1969

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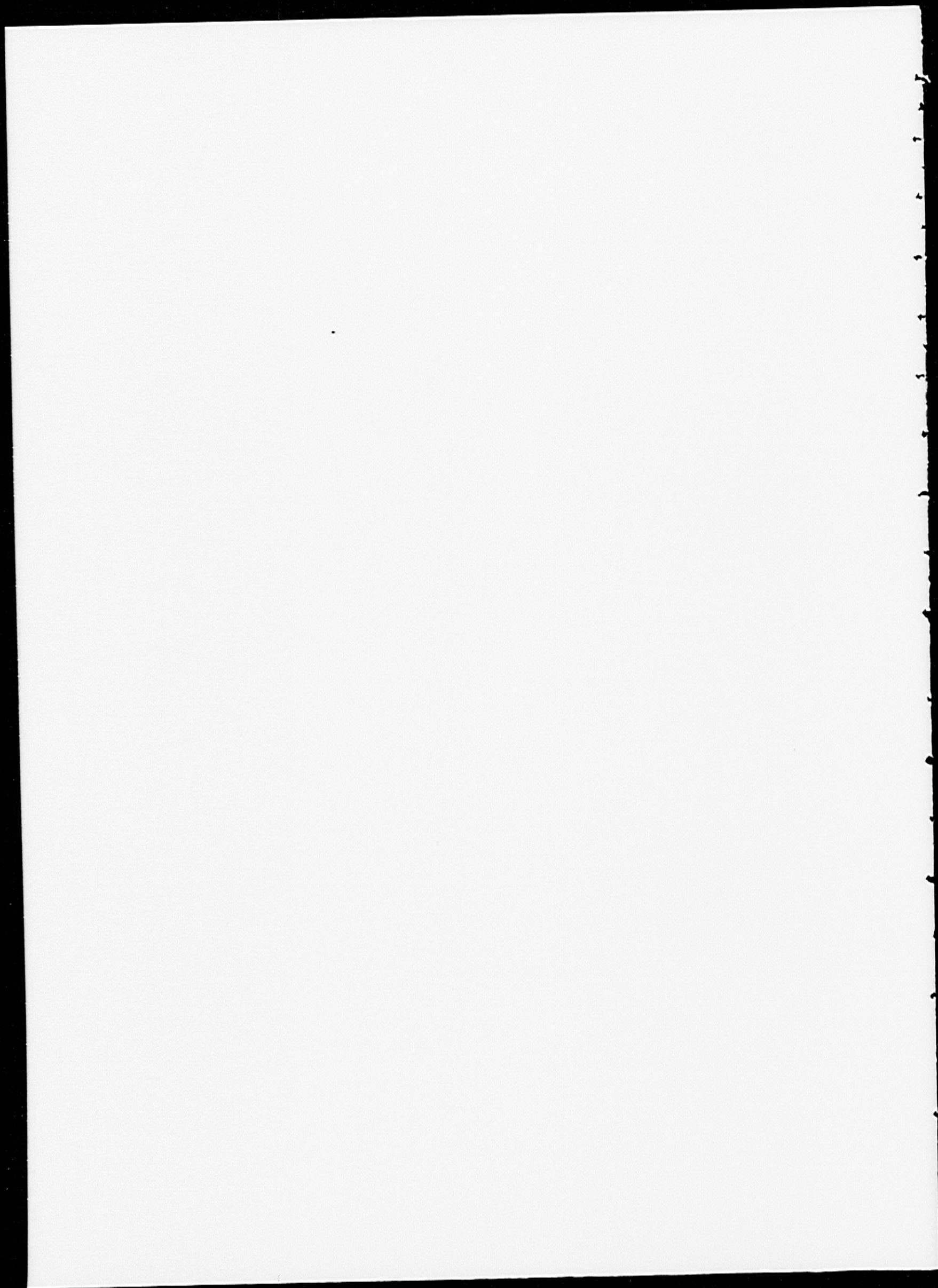
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UNITED STATES COURT OF APPEALS
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No. 22,904

D. C. TRANSIT SYSTEM, INC.,

Petitioner

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,

Respondent,

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PUBLIC SERVICE COORDINATED TRANSPORT,

Respondent-Intervenor

and

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,

Respondent-Intervenor

BRIEF FOR RESPONDENT

STATEMENT OF THE ISSUE

Should I.C.C.-certificated charter bus operators who
transport thousands of excursion groups to Washington annually

be required to hold, in addition to their I.C.C. certificates, a certificate of public convenience and necessity from the local regulatory body, the Washington Metropolitan Area Transit Commission, for the portion of the tour which takes place in the local Washington area.

ARGUMENT

I

THE TRANSPORTATION PERFORMED BY PUBLIC SERVICE COORDINATED TRANSPORT WITHIN THE WASHINGTON METROPOLITAN AREA TRANSIT DISTRICT IS NOT SUBJECT TO THE CERTIFICATION REQUIREMENT OF THE WASHINGTON METROPOLITAN AREA TRANSIT REGULATION COMPACT

- A. The Transportation In Question Is Not Transportation "Between Any Points In The Metropolitan District" Which Is The Basic Jurisdictional Criterion Of The Compact.

Public Service Coordinated Transport (PSCT) which holds certificates of public convenience and necessity issued by the Interstate Commerce Commission to perform interstate charter operations between points in New Jersey, New York, Pennsylvania and Delaware to other points in the United States and return, performed a tour service for a chartering party from Linden, New Jersey to Washington, D. C., and return, during which the party overnighted in Washington, and was transported on the tour bus to various places of interest in the District of Columbia, Arlington and Mount Vernon. The tour began in New Jersey

on October 14, 1966, and ended there on October 16, 1966. PSCT has performed other tour services of this kind and in fact it is a common type of tour "package" offered by many bus operators and used by many groups of visitors to the Nation's Capital.

The appellant, D. C. Transit System, Inc., contends that the local sightseeing portion of the tour is transportation subject to regulation under the Washington Metropolitan Area Transit Regulation Compact (Compact), and as such cannot legally be performed by a carrier which does not hold a proper certificate of public convenience and necessity from the Washington Metropolitan Area Transit Commission (WMATC) pursuant to the Compact.

Article XII, Section 1(a) of the Compact says:

This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except-- . . .

and there follows a listing of certain exceptions.^{1/}

^{1/} The Metropolitan District is defined as ". . . shall embrace the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties and that portion of Loudoun County, Virginia, occupied by the Dulles International Airport and the counties of Montgomery and Prince Georges, the State of Maryland and political subdivisions of the State of Maryland located within said counties, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties, cities and airport." Article I of the Compact.

The language of Section 1(a) is the beginning point for determining the scope of the application of the Compact, and that language requires that the transportation be "between any points in the Metropolitan District." Companies performing transportation between points in the Metropolitan District and which hold certificates of public convenience and necessity from WMATC include mass transit bus companies serving Washington and the Virginia and Maryland suburbs (whose certificates also authorize them to perform local sightseeing and charter services), the bus and limousine operator which serves the Washington National and Dulles International Airports, and several sightseeing and charter companies local to the Metropolitan District. The certificates of each of these companies authorize them to perform specified transportation services from and to various points within the Metropolitan District. All of the persons transported by those carriers pursuant to WMATC certificates originate with those carriers from some point within the Metropolitan District and terminate at some point within that District.

The persons in the Public Service Coordinated Transport chartering party originated in New Jersey and terminated there. The group that formed in New Jersey was intact when it arrived back in New Jersey; no one joined the group in Washington for

the Washington portion of the tour. Solicitation of the group by PSCT was done in New Jersey and arrangements for the tour were made in New Jersey. The tour was sold as a "package" and the single price included hotel accommodations and all of the transportation, including the local sightseeing portion. The same vehicle was used from the beginning of the trip in New Jersey to the end of the trip there.

All of these circumstances taken together indicate that this was in every respect a continuous journey beginning in New Jersey and ending there. The local sightseeing portion did not constitute a break in that continuous trip; it was an integral and inseparable part of the tour. Therefore, the transportation here in question was not transportation "between" points in the Metropolitan District.

The question of whether the continuity of a passenger bus tour originating and terminating at a point away from the locale visited is broken by the performance of local sightseeing was before the Massachusetts court in the only case we have found where a local authority was attempting to require a certificate of public convenience and necessity for the local portion of a sightseeing tour originating and terminating outside the local jurisdiction.^{2/}

^{2/} It is not surprising that no other cases of this nature are reported inasmuch as according to undisputed assertions made to the WMATC (see p. 209 of Petitioner's appendix) no other local jurisdiction imposes the kind of requirement petitioner would have WMATC impose here.

In Commonwealth v. New England Transportation Co.,

282 Mass. 429, 185 N.E. 23, (1933), on facts nearly identical to the facts in this case respecting the interstate nature of the tour and the manner in which the tour had been arranged and paid for as a package outside of Massachusetts, the court held:

The circumstance that the transportation is broken in the way shown in the case at bar and a part occurs entirely within one State does not affect its interstate character. If the journey or carriage is in truth and fact a single chain of interstate transportation, one link of it located within a single State does not sever the interstate commerce and become a separate section subject to State control.

This case is even stronger in support of our view, in that in the Massachusetts case the tour party had actually switched from one type of conveyance to another in the course of the trip, and this case involves use of one bus continuously throughout the sightseeing trip.

Of course, the question here is not a matter of distinguishing intra from interstate commerce as it was in the Massachusetts case, but the question of how the local portion of the transportation affects the character of the tour is conceptually indistinguishable in the two cases.

Our legal position has strong support in the practical implications of this case. Looking for a moment at the practical

result that a certificate of public convenience and necessity is required under the circumstances presented in this case, it is obvious that substantial inconvenience and cost would be incurred by the people who visit Washington, by the carriers who bring them, the WMATC would be confronted with at least hundreds of applications for local sightseeing and charter authority, and in no sense would the public interest be served.

A requirement for a carrier in the facts of this case to secure a WMATC certificate to perform the local portion of the tour would result in a very large number of applications being filed with WMATC,^{3/} and hearings in which local sightseeing operators, including petitioner, would protest the granting of any new certificates. Aside from the burden that processing these applications would place on WMATC, it should be kept in mind that the passenger will ultimately be required to pay the costs incurred by applicants and protestants in the protracted proceedings that would ensue from the filing of each application.

3/

The Public Service Commission of the District of Columbia issued more than 6,000 bus permits to tour groups such as are involved here in the year April 1, 1968 to March 31, 1969.

If a visiting group from any of the many points and places in the United States, large and small, from which those groups originate, were not able to charter a bus for the entire trip from a carrier that had a WMATC certificate, and there would be many such groups, those visitors would have to make additional arrangements for the local Washington portion of the tour. This would inconvenience them and cause additional expense. The vehicle and driver that would bring them to Washington and take them home would be idled while the visiting group toured on a locally-certificated carrier, but the touring group would still be required to pay for the idled bus and driver. Dealing with two different companies with sales and other personnel who must be paid would raise the costs for those visitors who are now required only to deal with one company for arrangements for the entire tour. Certainly those results would not be in the interest of those members of the public that are bus visitors to the Nation's Capital.

3. The WMATC Decision Is Consistent With The Language of Article XII, Section 1(a), 1(a)(4) and 20(a)(2) Of The Compact.

Article XII, Section 1(a) provides:

This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in

rendering or performing such transportation service,
except--

and Section 1(a)(4) states an exception to the general coverage,
as follows:

(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission;

Petitioner argues that since only regular route operations are removed by the exception of Section 1(a)(4) from the jurisdiction of the WMATC, and since the sightseeing operation under consideration is an "irregular route" operation, a certificate from WMATC is required to operate the sightseeing portion of the trip (p. 13, Petitioner's brief). The National Association of Motor Bus Owners (NAMBO) argued in its brief to WMATC (see argument in NAMBO brief to WMATC beginning at p. 19 of Petitioner's appendix) that charter rights of I. C. C. carriers such as PSCT are derived from regular route operations and

therefore charter operations have a regular route "personality." From that they conclude that their charter tours are "regular route" and come within the exception of Section 1(a)(4).

In the WMATC view, the court does not need to interpret the exception in Section 1(a)(4) as it applies to the transportation here involved since, as was argued in an earlier section of this brief, it is the WMATC view that this transportation is not included in the language of Section 1(a) to which Section 1(a)(4) is an exception, inasmuch as it is not transportation "between any points" in the Metropolitan District. The meaning of Section 1(a)(4) is irrelevant to this case, since its area of applicability is never reached.

Some argument was made to the WMATC, and discussion is contained in Petitioner's brief (pp. 15-17), regarding the meaning of Article XII, Section 20(a)(2) and its relevance to the issues in this case. The WMATC took the position in its Order No. 897 that Section 20(a)(2) has no application to the issue in this case, and we reassert that position here. The section provides:

(2) Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the

authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act.

This section did two things: first, it suspended the I.C.C. certificates held by carriers who had come under the jurisdiction of the new Compact agency and who would thereafter perform their local operations under certificates issued by the new WMATC. As a second step, Section 20(a)(2) kept alive the authority contained in the I.C.C. certificates of those carriers, insofar as those I.C.C. certificates had authorized those carriers to transport special and charter parties to and from points outside the Metropolitan District. Thus, this second part of Section 20(a)(2) was merely a saving clause, to preserve the authority held by those carriers which was not within the jurisdiction of the new WMATC.^{4/}

The carrier whose authority is here questioned, Public Service Coordinated Transport, was not one of the local carriers whose I.C.C. certificates were suspended by the Compact, hence the language of Section 20(a)(2) simply does not apply to authority held by Public Service Coordinated Transport.

^{4/} The Petitioner quoted the appropriate excerpts from the legislative history at page 17 of Petitioner's brief and we will not repeat it here. We would only add our conclusion that the legislative history quoted, strongly underlines our interpretation of Section 20(a)(2).

II

THE WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION HAS AUTHORITY TO CERTIFICATE CHARTER AND SIGHTSEEING ACTIVITIES BETWEEN POINTS IN THE METROPOLITAN DISTRICT

In its brief to the WMATC in the WMATC proceeding leading to the WMATC order here under appeal, PSCT argued as one ground for its position that the WMATC does not have authority to require a certificate of PSCT to conduct the transportation here involved, that WMATC does not have authority to certificate any sightseeing activity, but was authorized only to regulate mass transit in the Metropolitan District. While agreeing that the court should hold that WMATC does not have authority to require PSCT to hold a certificate to perform the transportation here in question, we urge the court most emphatically not to base its holding on the theory that WMATC is not authorized to certificate sightseeing operations.

The position of WMATC is that for sightseeing trips which are "between points" in the Metropolitan District, the WMATC is the certificating authority. WMATC has, in fact, exercised its authority to issue certificates of public convenience and necessity for sightseeing operations since its inception.

WMATC Certificate No. 1 is a certificate of public convenience and necessity issued to White House Sightseeing, Inc.,

a carrier which does no "mass" transit carriage in the sense of providing a regular route commuter service. Its certificate is confined to charter and sightseeing business. Other certificates confining the carrier involved to purely sightseeing operations have been issued by the WMATC and, in addition, those carriers who provide the area with regular route mass transit bus service are expressly certificated to do charter and sightseeing work.

Numerous cases have been before this Court and the United States Court of Appeals for the Fourth Circuit in which certificates of public convenience and necessity issued by the WMATC for charter and sightseeing have come under review. At no time has this Court or the Fourth Circuit Court questioned the basic authority of the WMATC to issue such certificates. In Holiday Tours, Inc. v. WMATC, 122 U.S. App. D.C. 196, 352 F2d 674, (D.C. Cir. 1965), this Court opened its opinion by saying:

Holiday Tours, Inc., seeks review of two orders of the Washington Metropolitan Area Transit Commission denying, initially and on reconsideration, its application for a certificate of public convenience and necessity, based on 'grandfather' rights under Article XII, Section 4(a) of the Washington Metropolitan Area Transit Regulation Compact, P.L. 86-794, 74 Stat. 1031, 1037 (1960) [footnote omitted]. Its application asked for authority to transport

'Passengers and their baggage in special operations in round trip sightseeing or pleasure tours and in

charter operations'

between specified points in the Washington Metropolitan Area. ^{5/}

Nowhere thereafter in its opinion did this Court question the basic premise that the WMATC had authority under the Compact to issue such a certificate; on the contrary, its disposition of the case was consistent with a recognition that the WMATC has authority to require certificates of public convenience and necessity for certain sightseeing and charter operations.

PSCT attempted to support its position that WMATC has no authority over sightseeing and charter operations by asserting that in the legislative history of the Compact mention is always made of "mass transit" (Petitioner's appendix, p. 82) and PSCT asserts that the language used in the Compact "connotes" mass transit (Petitioner's appendix, p. 83).

But these arguments are not valid. It is true that the main concern of the contracting parties and the Congress in establishing the WMATC under the Compact, was the regional coordination and regulation of the mass transit regular route bus operators in the metropolitan area. A reading of

^{5/} See also A. B. & W. Transit Co. v. WMATC, 323 F2d 777 (4th Cir. 1963); Gadd v. WMATC, 347 F2d 791, 121 U.S. App. D.C. 7 (D.C. Cir. 1965); D. C. Transit System, Inc. v. WMATC, 366 F2d 542 (4th Cir. 1966).

the legislative history reveals that most of the discussion was related to mass transit and only passing reference was made to charter and sightseeing operations. But it was clearly pointed out to Congressional committees by proponents of the Compact that the Compact was intended to cover charter and sightseeing operations^{6/} and no attempt was made to exclude those operations. In fact, thereafter, neither in the committee reports nor in the debates was there any discussion of charter and sightseeing specifically. The fact is that the legislative history is of very little help in disclosing the intent of Congress with respect to charter and sightseeing authority. To the limited extent that charter and sightseeing authority is expressly mentioned, however, the indications point definitely to the conclusion that WMATC was intended to have the authority.

But there really is no need to rely on the legislative history, for the Compact is clear. To quote again the basic jurisdictional language of Article XII, Section 1(a):

This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District. . .

^{6/} A report entitled "Transit Regulation for the Metropolitan Area of Washington, D. C." prepared for the National Capital Planning Commission and the National Capital Regional Planning Council, which was the basic plan for a scheme of regulation under a compact and which was incorporated in the legislative history stated: "Sightseeing or charter service within the metropolitan district performed by a carrier subject to the compact law would also be subject to the jurisdiction of the compact commission." See p. 143 of Petitioner's appendix.

The words used are "transportation for hire", not "mass transit" or "regular route transportation for hire" or any other qualifying words. Other, narrower terms such as "mass transit" could easily have been used to describe the WMATC jurisdiction if only mass movements of people over regular routes was the intended limit, but the broad term "transportation for hire" was used instead. There is no reasonable basis for concluding that Congress or the contracting parties meant a restricted jurisdiction for WMATC when they used the much broader language.

III

THE REGULATORY PURPOSES UNDERLYING THE INTERSTATE
COMMERCE ACT AND THE WASHINGTON METROPOLITAN AREA
TRANSIT REGULATION COMPACT WILL BE WELL SERVED
UNDER THE INTERPRETATION OF THE COMPACT HERE URGED
BY THE WMATC

The effect of a holding that PSCT, and the many other carriers like it who bring groups from out of town for tours of Washington, will henceforth be required to possess a certificate of public convenience and necessity from the WMATC to perform those tours, would be to subject those carriers to a regulatory process in which they would be required to answer to two public regulatory bodies which were established to perform their regulatory functions for largely identical purposes. Both I.C.C. and WMATC consider "fitness" of carriers to hold an authorization

to offer service to the public, both are concerned with the reasonableness of carrier rates and practices, both are concerned with consolidations and mergers. Much of the statutory language spelling out the scope of regulatory activity of the WMATC can be traced to the Interstate Commerce Act.

The basic purpose of both statutes, and the overriding responsibility of each commission, is to protect the public in its relations with those carriers who would offer transportation service to the public. Surely no public purpose will be served for two agencies to regulate one carrier to only one end. But the regulatory duplication would be not only totally unnecessary, it would cause a positive harm to the public by placing a positive cost burden on the public. The cost of two public agencies overseeing the operations of one carrier for the same reason would be unnecessary cost that the general public would have to bear. The costs to the carriers of securing two certificates from two public commissions through the frequently laborious process that the administrative hearing process, which includes intervenors and protestants, entails, would be borne by the members of the public who are the tourists who come to Washington on a bus tour.

These unnecessary and burdensome results are avoided by the interpretation the WMATC placed on the Compact.

Petitioner argues that the WMATC is ignoring its responsibilities with respect to the alleviation of traffic congestion in the Metropolitan District by allowing carriers uncertificated by WMATC to perform local sightseeing services. But there is no basis for concluding that if all the sightseeing that takes place here were conducted solely by locally certificated carriers, fewer buses would be required. In fact, one might easily conclude that congestion would be doubled under Petitioner's theory in this case due to the presence of idle interstate buses parked for 24 or 48 hours on the streets while the groups they brought to town were being transported locally by other buses. In any case, this point was not developed by the Petitioner in its presentation to the WMATC and thus cannot be a matter to be given any weight in this appeal.

CONCLUSION

The simple question to be answered in this case is: did the Congress and the contracting parties, in enacting the Washington Metropolitan Area Transit Regulation Compact intend that the many bus operators bringing the thousands of bus tour groups from all over the Nation to tour the Nation's Capital

should thereafter be required to possess a certificate of public convenience and necessity from a local regulatory agency in addition to certificates issued by the I.C.C. in order to perform the complete tour.

A straightforward, unstrained reading of the Compact -- as well as every consideration in the matter which bears on the question of cost and convenience to the public -- all lead to the conclusion that no such result was intended.

Respectfully submitted,

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Dated: July 23, 1969

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit
FILED JUL 22 1969

No. 22,904

Nathan J. Paulson
CLERK

D. C. TRANSIT SYSTEM, INC., a corporation
Petitioner

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Respondent

PUBLIC SERVICE COORDINATED TRANSPORT and
NATIONAL ASSOCIATION OF MOTOR BUS OWNERS
Intervenors

BRIEF OF INTERVENOR NATIONAL ASSOCIATION
OF MOTOR BUS OWNERS

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July 22, 1969

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iv.

STATEMENT OF ISSUES PRESENTED^{*/}

The issue on this appeal is whether the Washington Metropolitan Area Transit Commission ("Commission") erred in holding that an interstate charter operated by Intervenor Public Service Coordinated Transport (a carrier certificated by the Interstate Commerce Commission for interstate transportation of passengers) which originated in Linden, New Jersey and terminated there after coming into the Washington Metropolitan Area where the charter group engaged in local sightseeing, was not transportation subject to the Commission's jurisdiction under the Washington Metropolitan Area Transit Regulation Compact ("Compact"),^{**/} where the Commission -

(a) concluded that the Compact is not intended to cover interstate charters involving local sightseeing in the Washington Metropolitan Area Transit District^{***/} which are operated from and to points outside such District; and

^{*/} This matter has not been before this Court in any previous proceeding.

^{**/} Act of September 15, 1960, 74 Stat. 1031, P.L. 86-794, as amended, Act of October 9, 1962, 76 Stat. 764, P.L. 87-767.

^{***/} The District of Columbia, the Virginia Cities of Alexandria, and Falls Church, the Virginia Counties of Arlington and Fairfax, Dulles Airport, and the Maryland Counties of Montgomery and Prince George's (Compact, Art. I, Title I).

v.

(b) found as a fact that such a charter "constitutes one continuous trip" and that "the excursion within Washington is an integral and inseparable part thereof" with the consequence that the charter trip "does not fall under [the Commission's] jurisdiction over transportation between points in the Metropolitan District."

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,904

D. C. TRANSIT SYSTEM, INC., a corporation,

Petitioner

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,

Respondent

PUBLIC SERVICE COORDINATED TRANSPORT and
NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,

Intervenors

BRIEF OF INTERVENOR NATIONAL ASSOCIATION
OF MOTOR BUS OWNERS

STATEMENT OF CASE

On March 2, 1967, the D. C. Transit System, Inc. ("DCT") filed complaint against Intervenor Public Service Coordinated Transport ("Public Service"), alleging, inter alia, that the latter is performing passenger transportation for hire between points in the District of Columbia without appropriate authority from the Washington Metropolitan Area Transit Commission. On April 20, 1967, Public Service replied to the complaint, denying that it is engaged in transportation subject to the jurisdiction of the Commission.

On May 18, 1967, the National Association of Motor Bus Owners ("NAMBO") was permitted to intervene on the side of Public Service.

A stipulation of facts was entered into by the complainant and Public Service, dated August 4, 1967.^{1/} The stipulation shows that Public Service is the holder of a certificate from the Interstate Commerce Commission authorizing the interstate transportation of passengers by motor bus between points in New Jersey, and points in New York, Pennsylvania, or Delaware. It further stipulates that Public Service holds certificates from the Interstate Commerce Commission entitling it to transport passengers in special operations from points in New Jersey and Pennsylvania to many points in the United States, including the District of Columbia, and return.

A typical movement of which complaint is made is described in the stipulation. It is a chartering party originating in Linden, New Jersey, and going to Washington, D. C. and return. It commenced on October 14, 1966 and terminated on October 16, 1966. The members of the chartering party stayed overnight in hotel accommodations in Washington and during their stay in the Metropolitan Area were taken to points of historical interest in the District of Columbia and Arlington and Mount Vernon in Virginia. The same bus of

^{1/} Petitioner's Appendix (hereafter "Pet. App."), Appendix F, pp. 17-20.

Public Service was used for all the transportation.

Briefs were filed with the Commission by DCT, Public Service and NAMBO.^{2/} Oral argument was held on January 26, 1968.^{3/}

Thereafter the Commission issued its order No. 897, served December 18, 1968, dismissing the complaint.^{4/} The Commission held that Public Service, by performing interstate charters which stopped in the Metropolitan Area as represented in the stipulation of facts, had not engaged in transportation subject to its jurisdiction under the Compact. It reviewed the terms of the Compact as well as its legislative history and concluded that it was not intended to reach interstate charters operated into the Metropolitan Area even though the charter group engaged in local sightseeing.^{5/} It found as a fact that such charter trips are "one continuous trip" and that "the excursion within Washington is an integral and inseparable part thereof."^{6/} It further found that for this reason such charter trips do not "fall under our jurisdiction over transportation between points in the Metropolitan

^{2/} Pet. App., pp. 24-97.

^{3/} Id., p. 168 et seq.

^{4/} Id., pp. 135-140.

^{5/} Id., p. 137.

^{6/} Ibid.

District."^{7/}

DCT petitioned the Commission for reconsideration.^{8/}
Replies were filed by Public Service^{9/} and NAMBO^{10/} and
DCT answered the reply of Public Service.^{11/} The Commis-
sion's order No. 925, served February 17, 1969, denies^{12/}
reconsideration.

On April 8, 1969, DCT filed its petition for review
by this Court. By order filed June 2, 1969, Public Service
and NAMBO were allowed to intervene on the side of respondent.

ARGUMENT

I. Public Service Was Authorized Under The Interstate Commerce Act To Perform The Charter In Issue

As the holder of a regular route certificate issued
by the Interstate Commerce Commission, the respondent had
the right under Section 208(c) of the Interstate Commerce
Act, 49 U.S.C. § 308(c), to transport special or chartered
parties from points along its regular route to any place in
the United States, under regulations of the ICC. At the time

^{7/} Id., p. 138.

^{8/} Id., pp. 140-154.

^{9/} Id., pp. 154-162.

^{10/} NAMBO's reply has not been included in
the record certified to this Court.

^{11/} Pet. App., pp. 162-166.

^{12/} Id., p. 166.

this charter was performed, Section 208(c) provided that -

"Any common carrier by motor vehicle transporting passengers under a certificate issued under this part may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed." 13/

The applicable regulations of the ICC defined origin territory for charter movements as follows:

"Any common carrier of passengers by motor vehicle subject to the regulations in this part may transport special or chartered parties (a) which originate at any point or points on the regular route or routes, or at any off-route point or points, authorized to be served by such carrier, or (b) which originate at any point or points within the territory served by its regular route or routes." (49 C.F.R. § 178.3)

The same regulations define destination territory in the following language:

13/ P.L. 89-804, 80 Stat. 1521, effective November 10, 1966, amended Section 208(c) to read:

"Any common carrier by motor vehicle transporting passengers under a certificate issued under this part pursuant to an application filed on or before January 1, 1967, or under any reissuance of the operating rights contained in such certificate, may transport in interstate or foreign commerce to any place special or chartered parties under such rules and regulations as the Commission shall have prescribed."

The legislation preserved incidental charter authority for certificates issued before it took effect. See, Interstate Charter Rights For Carriers Of Passengers, 34 ICC Practitioners Journal 221 (1967).

"Common carriers of passengers by motor vehicle subject to the regulations in this part may transport special or chartered parties in interstate or foreign commerce to any place or point in the United States. Special or chartered parties may not be transported from the destination territory described in this rule to the origin territory described in § 178.3, except on return movement of the same special or charter party as provided therein." (49 C.F.R. §178.3)

Thus, Public Service held authority from the Interstate Commerce Commission to conduct the charter in issue, under its incidental charter rights conferred by Section 208(c) of the Act as well as its special operations certificate. Moreover, since the charter originated on and was returned to a point on Public Service's regular route outside the Metropolitan Area it could not have been performed by DCT.

II. Consistent Determinations Of The Commission
That The Compact Does Not Cover Interstate
Charters Of The Kind Involved Here Are
Entitled To Great Weight In This Court

The Commission has consistently held that interstate charters performed by carriers certificated by the Interstate Commerce Commission are not subject to the Compact. In 1963 and 1964 there were pending before the Commission applications for grandfather certificates under Section 4(a), Article XII, Title II of the Compact, which had been filed by such ICC certificated carriers as The Greyhound Corporation, Safeway Trails, Inc., Virginia Stage Lines, Inc., and Baltimore and Annapolis Railroad Company. The applications were

dismissed on the ground that authority from the Commission was not required. The Commission concluded that -

" . . . It appears to the Commission that the transportation for which authority is sought is exempt from the jurisdiction of the Commission pursuant to Section 1(a)(4), Article XII, Title II, of the Compact, as amended." 14/

In Order No. 311 the Commission added a reference to incidental charter authority under the Interstate Commerce Act, saying:

"The proposed action of the Commission in dismissing these applications cannot affect the authority of these carriers to transport special and chartered parties as now authorized by the Interstate Commerce Act."

The corresponding statement in Order No. 366 is that -

"The action of the Commission in dismissing these applications does not affect the authority of these carriers to transport special and chartered parties as now authorized by certificates of public convenience and necessity issued by the Interstate Commerce Commission."

The same determination applies to the performance of the charter by Public Service in this case. It was authorized under a certificate issued by the Interstate Commerce Commission and that authority is not affected by the Compact. The Commission properly reached the same determination in this case.

If there were any doubt about the meaning of the Compact, these consistent constructions by the Commission - the agency charged with implementation of the Compact -

14/ Orders Nos. 311 and 366. Copies thereof are attached hereto as Appendices A and B, respectively.

should be decisive in this Court. As the Supreme Court concluded long ago -

"Administrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons if the scope of the command is indefinite and doubtful . . . The practice has peculiar weight when it involves contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new."
Norwegian Nitrogen Co. v. United States,
288 U.S. 294, 315 (1933).

III. The Commission's Finding Of Fact That The Charter Movement In Issue Was A Continuous And Integral Whole Which Did Not Involve Transportation Between Points In The Metropolitan District Is Conclusive

The Compact reaches only "transportation for hire . . . between . . . points in the Metropolitan District" (Compact, Title II, Article XII, Section 1(a)). The Commission found as a fact that the charter performed by Public Service did not involve transportation "between points" in the Metropolitan District (Pet. App., pp. 138-139). This finding is based upon the fact, as found by the Commission, that the charter trip is a "continuous trip" and "an integral whole" as to which "the excursion within Washington is an integral and inseparable part thereof." (Id., p. 137-138). These findings arise out of the stipulation of facts which describes the charter trip in detail as follows:

". . . the Respondent provided service on a tour for a chartering party which

originated at Linden, New Jersey, and traveled to Washington, D. C. and return, commencing on October 14, 1966 at Linden, New Jersey, and ending at Linden, New Jersey on October 16, 1966. The tour patrons had overnight hotel accommodations in Washington, D. C. During the course of that tour, the Respondent's bus transported the tour patrons over the streets and highways of the District of Columbia and Arlington and Mount Vernon, Virginia, where the tour patrons were taken to visit numerous points of historical interest in those areas. All of those passengers on that tour departed from and returned to the same bus at each such point of interest. All of those passengers on that tour commenced and ended their trips at Linden, New Jersey." (Pet. App., pp. 18-19).

The Judicial Review provisions of the Compact state that findings of fact by the Commission "if supported by substantial evidence, shall be conclusive." (Compact, Title II, Article XII, Section 17(a)). The findings by the Commission in this case are based upon the stipulation of facts and the inferences drawn therefrom. They are thus supported by substantial evidence and entitled to be dealt with as conclusive on this appeal.

The inferences drawn by the Commission from the basic facts are not open to attack on review. The recognition accorded the expertise of administrative agencies by the Federal judiciary has caused reviewing Courts to decline to substitute their judgment for that of the agency in inferences drawn from proved facts even though the Courts might have independently reached a different result. In Radio Officers' Union v. NLRB, 347 U.S. 17 (1954), the Supreme Court explained the basis for this principle as follows:

"An administrative agency with power after hearings to determine on the evidence in adversary proceedings whether violations of statutory commands have occurred may infer within the limits of the inquiry from the proven facts such conclusions as reasonably may be based upon the facts proven. One of the purposes which lead to the creation of such boards is to have decisions based upon evidential facts under the particular statute made by experienced officials with an adequate appreciation of the complexities of the subject which is entrusted to their administration." 347 U.S. at 48-49.

In the same vein the Court declined to upset a finding by the Federal Trade Commission that small differentials in the price of candy may "substantially lessen competition," saying:

"The weight to be attributed to the facts proven or stipulated, and the inferences to be drawn from them, are for the Commission to determine, not the courts." Corn Products Refining Co. v. FTC, 324 U.S. 726, 739 (1945).

Similarly, in NLRB v. Nevada Consolidated Copper Corporation, 316 U.S. 105 (1942), the Court declined to substitute its judgment for that of the NLRB in a situation in which different inferences might have been drawn from the evidence. The Court said:

"The possibility of drawing either of two inconsistent inferences from the evidence did not prevent the Board from drawing one of them If the findings of the Board are supported by evidence the courts are not free to set them aside, even though the Board could have drawn different inferences." 316 U.S. at 106-107.

The findings by the agencies in those cases are not

different from what the Commission did here. It had before it a stipulation of facts showing that the charter originated in Linden, New Jersey and returned there after a tour of historical sites in the Metropolitan Area with the passengers using the same bus throughout the trip. The passengers were together during the entire trip and none was originated or discharged in the Metropolitan Area. The Commission, an expert in the field of regulation of transportation, found that the trip was an integral whole which did not constitute transportation "between points" in the Metropolitan Area. Its findings are thus supported by substantial evidence and entitled to conclusive effect.

IV. The Commission Correctly Determined That
The Compact Is Not Intended To Cover
Interstate Charters Beginning And Ending
Outside The Metropolitan District

The Commission ruled, consistent with its prior decisions, that the Compact was not intended to impose the requirement that "groups coming to Washington by charter bus who wish to engage in local sightseeing as a group must make use of a local certificated carrier rather than the charter operator who brought them here." (Pet. App., p. 137). Underlying this conclusion is the Commission's finding that the charter trip was a continuous movement - an integral whole - which was not transportation "between points" in the Metropolitan Area. As previously noted, the Courts have declined to substitute their judgment for agency findings

and conclusions of the character made by the Commission in this case. Nevertheless it may be observed that, as shown hereafter, the Commission's findings and conclusions are otherwise well supported in the terms of the Compact, its legislative history and other applicable law.

- (a) The Recognized Nature Of An Interstate Charter Trip From And To Points Outside The Metropolitan Area Precludes Transportation Between Points Within Such Area

There is no dispute about the fact that this charter trip was performed pursuant to authority under the Interstate Commerce Act.^{15/} Regulations and decisions of the Interstate Commerce Commission under that Act show that a charter is a continuous movement from origin to final destination which is not interrupted, for purposes of the law, by sightseeing along the way.

Specific authority for performance of the charter by Public Service is its incidental charter rights under Section 208(c) of the Interstate Commerce Act, 49 U.S.C. § 308(c).^{16/} Such a charter is defined in the ICC's regulations on incidental charter rights, 49 C.F.R. 178.2(9), as follows:

^{15/} This fact is not altered by DCT's contention that the charter should have been performed under the authority of the Compact. Even if DCT were correct, the evidence shows that Public Service acted under the Interstate Commerce Act.

^{16/} See pp. 4-6, supra.

"The term 'special or chartered party' as used in the regulations in this part, means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, lawfully on file with the Commission, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the charter group after having left the place of origin."

In Greyhound Corp. v. Edwards, 100 MCC 453 (1966),

the Commission held that recognized charter activities -

". . . would include, but not be limited to, sightseeing or attendance at a social function, athletic contest, dramatic presentation, cultural event, religious service, or the like." 100 MCC at 464.

The Commission further said in that case that a charter for the purpose of taking a group to a bingo game is proper because it -

". . . involve[s] participation of all the group members in a single prearranged activity which takes place in a single specified location and lasts for a specified time. All members of the group go together to the same place, remain for the same period, do the same things, and return together at the same time . . ." 100 MCC at 465.

The Commission added:

". . . The group must travel together for the entire duration of the particular tour or trip. This is not to say that group members cannot be picked up at more than one location at the point of origin or that group members, during the tour, cannot at any time pursue their own ends individually; but for traveling purposes, the group must remain together." 100 MCC at 465.

It is apparent that the very concept of a charter under the Interstate Commerce Act is contrary to the argument of DCT that a charter operated from the outside into the Metropolitan District could be broken up into transportation packages with the Metropolitan District portion considered separate for regulatory purposes. A charter is a continuous movement and an integral whole. The Commission correctly found:

"The bus is chartered to bring the bus riders here as a group, to remain together as a group while they visit the sights of the city, and to return to their home city as a group. The trip is an integral whole and cannot legitimately be split into its component parts for regulatory purposes." (Pet. App., p. 138).

Since the charter is a continuous whole it could not involve "transportation . . . between points" as required for jurisdiction under Title II, Article XII, Section 1(a). Another reason for this conclusion is that the word "points" in transportation law means "termini" at which passengers are originated or discharged.^{17/} There were no passengers originated or discharged at any stations or stops in the

^{17/} See Golden Gate Scenic Steamship Lines, Inc. v. Public Utilities Commission, 19 Cal. Rep. 657, 369 P.2d 257, 261 (1962), where the Court interpreted the phrase "between points" in a regulatory statute as "the equivalent of 'termini'."

Metropolitan Area on the charter in suit. Consequently there was no transportation "between points" in the District.

- (b) Other Provisions Of The Compact Confirm The Fact That It Was Not Intended To Cover Interstate Charters From And To Points Outside The Metropolitan District

Section 1(a)(4) of Article XII, Title II, of the Compact excepts from coverage "transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce." The reference to regular route does not exclude from the exception ICC approved interstate charter operations under Section 208(c) of the Interstate Commerce Act.

It has always been understood that charter rights under Section 208(c) are incidental to, an integral part of, and inherently bound up with regular route rights. They are such an inseparable part of regular route operations that

they are not severable from the regular route authority. Thus, in Ex Parte MC-29, Regulations, Special or Chartered Party Service, 29 MCC 25 (1939), the ICC said:

"Section 208(c) is not a limitation upon any rights authorized by section 206(a) of the Act, but confers an additional right, without proof, and which is not severable, to carriers operating over a regular route or routes and between fixed termini." (29 MCC at 46, emphasis added).

In further explanation of the regular route character of these rights the Commission stated in Red Star Lines, Inc., Common Carrier Application, 27 MCC 614 (1941) that:

"In other words, the act contemplates the placing of passenger carriers in two categories, (1) those engaged in operations over regular routes and between fixed termini with certain incidental special or charter rights and, (2) those engaged in special or charter operations without regard to any regular-route or fixed termini operation." (27 MCC at 617-618, emphasis added).

Similar statements have been made by the Commission in Peninsula Transit Corp., Common Carrier Application, 1 MCC 440, 442 (1937) and Lincoln Tunnel Applications, 12 MCC 184, 196 (1939).

Thus, interstate rights for charters under the Interstate Commerce Act are legally an inseparable part of regular route authority. It would be anomalous indeed for the framers of the Compact to exclude one from coverage without excluding the other -- to make separable that which

the Commission and the Congress^{18/} have always considered inseverable.

This is the reason that this section of the Compact could properly be construed to except from the jurisdiction of the Commission the kind of interstate charter made the subject of this case. At the very least the section confirms the conclusion of the Commission that the intent of the Compact is to "exclude . . . operations by carriers from outside the Metropolitan District," which is the nature of the operations of Public Service questioned by DCT (Pet. App., p. 137).

- (c) The Legislative History Of The Compact Further Shows An Intent Not To Reach Interstate Charters Subject To The Interstate Commerce Act

DCT continues to argue, as it did before the Commission, that the original proposal of compact legislation would have made any character of surface transportation within the boundaries of the Metropolitan District subject

^{18/} In amending the Act in 1966, Congress reiterated the inseparable character of charter rights, saying:

"The 'reissuance' of the operating rights contained in a certificate issued prior to January 1, 1967, would carry with it incidental charter rights, but the Committee does not intend by this language to permit the severance and separate transfer of incidental charter rights from the underlying basic regular route authority." (S. Rep. 1552, 89th Cong., 2d Sess., p. 1).

to local regulation (Petitioner's Brief, p. 10). It overlooks the fact that this proposal was rejected in favor of the provisions of Section 1(a)(4) of Title II, Article XII, excepting transportation from points outside the District. Explaining the change, the Committee of Congress reporting out the legislation, said:

"Amendment No. 8 expresses the Congressional policy that jurisdiction of the Compact should extend only to transportation performed solely within the proposed metropolitan district." (H. Rep. 1621, 86th Cong., 2d Sess., p. 3 (1960); emphasis added).

The Committee added that:

". . . The effect of this amendment from the standpoint of division of jurisdiction is to treat the metropolitan district as a state with the consequence that the Washington Metropolitan Area Transit Commission would have jurisdiction over purely intrametropolitan district transportation and the Interstate Commerce Commission would have jurisdiction over transportation crossing the metropolitan district boundaries." (Id., p. 22; emphasis added).

The framers thus intended the Commission to exercise jurisdiction as would a state. That is, it would regulate local transportation and the Interstate Commerce Commission would continue to have jurisdiction over transportation from outside the District. As the Commission pointed out, there is no indication that any state, or even a city, attempts to exert the kind of authority DCT would have imposed here (Pet. App., p. 137).

Other Authorities Support
The Decision Of The Commission

The Supreme Court interpreted the Compact in

Universal Interpr. Shuttle Corp. v. Washington M.A.T. Commission, ____ U.S. ____, 89 S. Ct. 354 (1968) in a manner contrary to DCT's contention here that the Transit Commission has jurisdiction over any kind of surface transportation within the District. The Court concluded that the Commission was not intended to have exclusive jurisdiction over all transportation performed in the Metropolitan District.^{19/} It commented on the purpose of the Compact as follows:

"Congress was endeavoring to simplify the regulation of transportation by creating the WMATC, not to thrust it further into a bureaucratic morass. It therefore established the WMATC to regulate the mass transit of commuters and workers." (89 S. Ct. at 358, emphasis added).

Interstate charters originating outside the District are not the "mass transit of commuters and workers" and they are not embraced by the purpose of Congress in establishing the Commission.

Another decision by the Supreme Court in City of Chicago v. Atchison T. & S.F. Ry. Co., 357 U.S. 77 (1958) shows that local authorities may not usurp the jurisdiction of the Interstate Commerce Commission under the Interstate Commerce Act. In that case the City of Chicago adopted an ordinance requiring certificates to be obtained by a company

^{19/} It held that notwithstanding the Compact the Secretary of the Interior has power to contract for transportation by an uncertificated carrier for the Mall in Washington, D. C.

offering passenger transportation between railroad terminals in the city. The Court held the ordinance invalid as conflicting with the Interstate Commerce Act which regulates rail carrier transfer services between terminals, noting that:

" . . . Of course the City retains considerable authority to regulate how transfer vehicles shall be operated. It could hardly be denied, for example, that such vehicles must obey traffic signals, speed limits and other general safety regulations. Similarly the City may require registration of these vehicles and exact reasonable fees for their use of the local streets. . . . All we hold here, and all we construe the Court of Appeals as holding, is that the City has no power to decide whether Transfer can operate a motor vehicle service between terminals for the railroads because this service is an integral part of interstate railroad transportation authorized and subject to regulation under the Interstate Commerce Act" (357 U.S. at 88-89). ^{20/}

DCT attempts to distinguish this decision with the contention that the Commission was intended to have exclusive jurisdiction over all transportation in the District and thus there could be no conflict with the Interstate Commerce Commission (Petitioner's Brief, p. 7). The answer to such an argument is that Congress made it clear the Compact was to deal "solely" with intrametropolitan transportation in the

^{20/} Subsequent efforts by the City to exact further regulation were also stricken down by the Court. Railroad Transfer Service, Inc. v. City of Chicago, et al., 386 U.S. 351, 87 S. Ct. 1095 (1967).

same way a state regulates transportation within its borders, as previously noted. In short, Congress separated local from Federal regulation and DCT's position would create conflicts between the two equally as great as in the City of Chicago case.

Many Practical Difficulties
Would Ensur If DCT's Position
Were To Prevail

If DCT's position on this appeal were to prevail many practical difficulties would be encountered in conflicting jurisdiction between the ICC and WMATC, legal obstacles to completion of charter movements, wastage of motor carrier equipment and resources, and inconvenience to passengers. The consequence would almost certainly be elimination of charter transportation to the District.

Nearly all charters coming into the District are originated by carriers with basic route operations at other points in the nation. As the Commission noted, "there are literally thousands of buses and millions of persons who come here under similar circumstances annually." (Pet. App., p. 138).

DCT's proposal for these carriers and their passengers is that they stop the charter at the District boundary and turn the passengers over to a local carrier (i.e., DCT) for sightseeing. There would be a change of equipment with passengers transferring to a different bus using different personnel. Thus, passengers would be inconvenienced and

equipment idled. Millions of persons would be affected (Pet. App., p. 138).

Aside from these problems, a legal cloud would be placed over every charter operation. This would result from the termination of the originating leg of the charter at the District boundary followed by a new origination of the charter at the time the passengers were returned to the originating carrier by DCT. The carrier which originated the charter, however, may not originate charters in the District unless it has a certificate for such operation. In nearly every instance, as in the case of Public Service previously discussed, the carrier's authority is limited to originating charters on its regular route back home. Thus, the carrier would not have authority to return the charter party to its home point of origin.

The framers of the Compact could not have been unaware of the difficulties that would be caused by requiring certificates issued by WMATC (as well as the ICC) for charters operated into the District from points outside thereof. In any case, they did not adopt the approach of DCT which would wreak havoc on such operations.

CONCLUSION

In this case an administrative agency has construed its enabling legislation as limiting its jurisdiction by excluding interstate charters originating outside the Metropolitan District which are performed by carriers

certificated by the Interstate Commerce Commission. The Commission has followed this construction of the Compact from the beginning of its operations. In addition, its decision is grounded on the finding of fact that the charter transportation performed by Public Service was not "transportation for hire . . . between . . . points" in the Metropolitan District. That finding is entitled conclusive effect on this appeal.

No reason appears in the record for overturning the Commission's conclusions of law or its findings of fact. Indeed, the plain terms of the Compact, its legislative history and the law relating to charters show that its decision was eminently correct.

For these reasons the decision of the Commission should, it is respectfully submitted, be affirmed.

Respectfully submitted,

/s/ Robert J. Corber
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Of Counsel.

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D. C.
ORDER NO. 311

IN THE MATTER OF:

Served September 20, 1963

Application of:

The Greyhound Corporation)	
140 South Dearborn Street)	
Chicago 3, Illinois)	Application No. 61
Safeway Trails, Inc.)	
1200 Eye Street, N. W.)	
Washington, D. C.)	Application No. 96
Virginia Stage Lines, Inc.)	
114 Fourth Street, S. E.)	
Charlottesville, Virginia)	Application No. 37

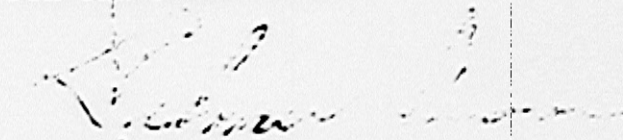
This Commission has received applications from: The Greyhound Corporation, Chicago, Illinois; Safeway Trails, Inc., Washington, D. C.; and Virginia Stage Lines, Inc., Charlottesville, Virginia, for Certificates of Public Convenience and Necessity filed pursuant to Section 4(a), Article XII, Title II of the Compact ("grandfather" clause). It appears to the Commission that the transportation for which authority is sought is exempt from the jurisdiction of the Commission pursuant to Section 1(a)(4), Article XII, Title II, of the Compact, as amended.

The proposed action of the Commission in dismissing these applications cannot affect the authority of these carriers to transport special and chartered parties as now authorized by the Interstate Commerce Act.

ORDER NO. 311

THEREFORE, IT IS ORDERED that any interested person desiring to protest the proposed action of the Commission to dismiss the within applications shall do so in writing, on or before November 1, 1963.

FOR THE COMMISSION:

A handwritten signature in dark ink, appearing to read "Delmer Ison", is written over a faint, illegible stamp or set of lines.

DELMER ISON
Executive Director

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D. C.
ORDER NO. 366

IN THE MATTER OF:

Served June 17, 1964

Applications for Certificates of)
Public Convenience and Necessity)
("Grandfather" Clause) by:)

The Greyhound Corporation)
140 South Dearborn Street)
Chicago 3, Illinois)

Application No. 61

Safeway Trails, Inc.)
1200 Eye Street, N. W.)
Washington, D. C.)

Application No. 96

Virginia Stage Lines, Inc.)
114 Fourth Street, S. E.)
Charlottesville, Virginia)

Application No. 37

Baltimore and Annapolis)
Railroad Company)
100 South Howard Street)
Baltimore 1, Maryland)

Application No. 87


This Commission has received applications from: The Greyhound Corporation, Chicago, Illinois; Safeway Trails, Inc., Washington, D. C.; Virginia Stage Lines, Inc., Charlottesville, Virginia; and Baltimore and Annapolis Railroad Company, Baltimore, Maryland, for certificates of public convenience and necessity filed pursuant to Section 4(a), Article XII, Title II, of the Compact ("grandfather" clause). It appears to the Commission that the transportation for which authority is sought is exempt from the jurisdiction of the Commission pursuant to Section 1(a)(4), Article XII, Title II, of the Compact, as amended.

The action of the Commission in dismissing these applications does not affect the authority of these carriers to transport special and chartered parties as now authorized by certificates of public

convenience and necessity issued by the Interstate Commerce Commission.

THEREFORE, IT IS ORDERED that the applications of The Greyhound Corporation, Safeway Trails, Inc., Virginia Stage Lines, Inc., and Baltimore and Annapolis Railroad Company, for certificates of public convenience and necessity be, and they are hereby, dismissed without prejudice to the right of such carriers to prosecute such applications in the event a subsequent determination is made that the transportation for which authority is sought comes within the jurisdiction of the Commission.

BY DIRECTION OF THE COMMISSION:



DELMER ISON
Executive Director

In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 3 1969

No. 22,904

Nathan J. Paulson
CLERK

D. C. TRANSIT SYSTEM, INC., a corporation
Petitioner

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Respondent

and

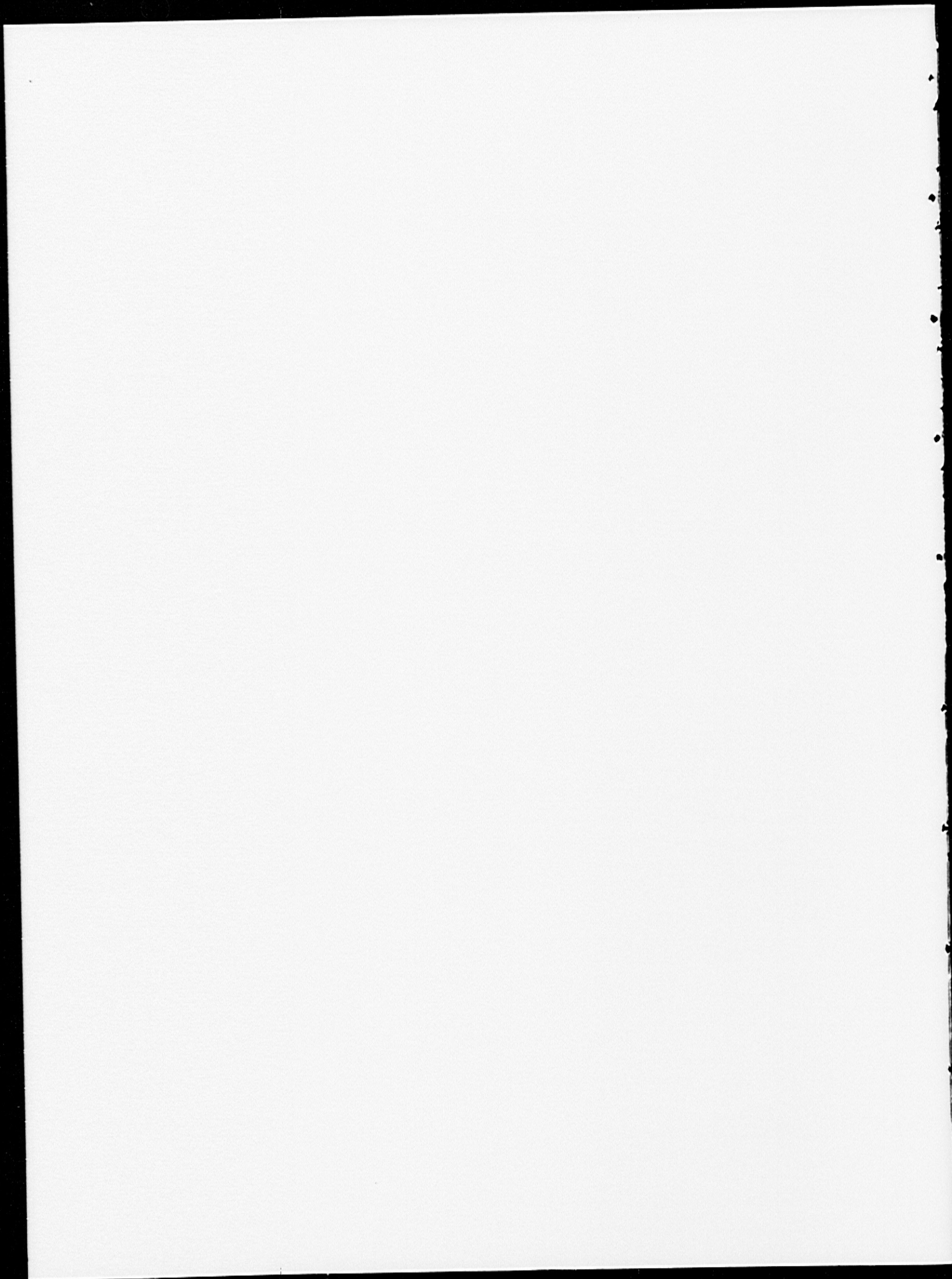
PUBLIC SERVICE COORDINATED TRANSPORT,
Respondent-Intervenor

and

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,
Respondent-Intervenor

REPLY BRIEF FOR PETITIONER

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In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,904

D. C. TRANSIT SYSTEM, INC., a corporation,
Petitioner

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,
Respondent

and

PUBLIC SERVICE COORDINATED TRANSPORT,
Respondent-Intervenor

and

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,
Respondent-Intervenor

REPLY BRIEF FOR PETITIONER

ARGUMENT

D. C. Transit System, Inc. (Transit) in reply to
briefs filed in this matter by Respondent, the Washington
Metropolitan Area Transit Commission (Commission), and two

Intervenors, Public Service Coordinated Transport and the National Association of Motor Bus Owners (Public Service and NAMBO respectively), files this reply brief as a single reply to all three of the aforesaid briefs. However, your writer will address himself to each brief separately, and generally where warranted.

First, responding to the Commission's brief one can immediately see that the Commission completely ignores the plain words and unambiguous meaning of the Compact and arrives at its conclusion in a reverse manner. The Commission made its decision first and then searched for the necessary reasoning to support its conclusion. By its own language "... these circumstances taken together indicate that this was in every respect a continuous journey..." (emphasis supplied), the Commission discloses the lack of firmness of a positive decision.

The Commission, throughout its brief ignores the straight forward language of the Compact and refuses to face the task of performing its public duty. The Commission continues to treat the Washington Metropolitan District as a State with subordinate authority to the Interstate Commerce Commission when in fact the Compact created an agency equal to and in place of the Interstate Commerce Commission.

The Commission relies heavily upon the language of Section 1(a)(4), Article XII of the Compact but ignores the

key language therein and then reads into this Section only that language that it desires to see. This Section, commonly referred to as the exemption section reads, in part, as follows:

(4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission; (emphasis supplied)

It would be useless to cite the many cases classifying charter or special operations as being performed over "irregular" routes as compared to "regular" route traffic. In the face of the clear language of the Compact - as emphasized above - how can the Commission continue to refer to the regular route exemption as applying to the charter and special services. The Commission noted that the argument of NAMBO of regular route "personality" but dismissed this approach as well as its reliance on Article XII Section 1(a)(4) with a brief paragraph saying that the transportation in question is not involved or included in the language of the Compact in

Section 1 (a), said transportation not being transportation "between any points" in the Metropolitan District. The Commission dismisses further argument by passing over Article XIII Section 20 (a)(2) of the Compact and relies upon this Section to give interstate carriers a "charter or special service" exemption in the nature of a "saving clause".

The important question is what charter or special rights are saved, if any. The Section reads as follows:

(2) Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act.

The Commission's interpretation of this Section was concluded in the following paragraphs:

This section did two things: first, it suspended the I.C.C. certificates held by carriers who had come under the jurisdiction of the new Compact agency and who would thereafter perform their local operations under certificates issued by the new WMATC. As a second step, Section 20(a)(2) kept alive the authority contained in the I.C.C. certificates of those carriers, insofar as those I.C.C. certificates had authorized those carriers to transport special and charter parties to and from points outside the Metropolitan District. Thus, this second part of Section 20(a)(2) was merely a saving clause, to preserve the authority held by those carriers which was not within the jurisdiction of the new WMATC.

The carrier whose authority is here questioned, Public Service Coordinated Transport, was not one of

the local carriers whose I.C.C. certificates were suspended by the Compact, hence the language of Section 20(a)(2) simply does not apply to authority held by Public Service Coordinated Transport.

However, it appears to this writer that the Commission has missed the clear meaning of this Section by saying two different things neither of which is contemplated by the Compact.

Section 20(a)(2) must be taken as a part of the entire Compact. When taken as a whole, it is made clear that the only Interstate Commerce Commission rights which were to be suspended were rights held by carriers operating principally within the Metropolitan District or meeting the other tests set forth in the Compact. The saving clause was to "save" the charter and special rights of the carriers coming under the jurisdiction of the Compact. Other carriers are granted protection by the exemption section. However, if a carrier does not qualify for the exemption, then the carrier must submit to the jurisdiction of the Commission if it desires to transport passengers within the Metropolitan District.

Second, Public Service in a most concise brief attempts to escape the jurisdiction of the Commission by emphasizing that "mass transit" is the domain of the Commission and that such "mass transit" does not include charter or special operations. The Commission attacked this argument in its brief and further comment seems unnecessary at this time. The Commission, since its conception has regulated charter and

special operations and its authority in this area is without question.

Public Service next attempts to take advantage of Commission Orders Nos. 311 and 366, served September 20, 1963 and June 17, 1964. There can be no connection in these Orders with the position of Public Service. The parties involved in the above orders were all engaged in regular route interstate operations covered by the exemption section of the Compact. Public Service has no regular route authority as that discussed in the Orders Nos. 311 and 366.

The judicial decisions discussed by Public Service all concern interpretations of statutes, rules or regulations of governing bodies in conflict with or subordinate to the Interstate Commerce Commission. Although some of the factual situations may sound or seem very similar to the present proceeding, one most important characteristic is missing. The Washington Metropolitan Area Transit Commission was created in place of the Interstate Commerce Commission in the Metropolitan District and not in addition thereto. The Commission alone exercises jurisdiction within the Metropolitan District - there is no conflict or possible conflict with the Interstate Commerce Commission.

A review of Article XII, Section 1(a)(4) has already been set out herein and should need no further comment.

Third, NAMBO has gone to great extents in its brief to point up that its representatives are well schooled with

matters pertaining to the Interstate Commerce Commission. However, as pointed out above, we are not dealing with the authority of the Interstate Commerce Commission, but with the powers of the Washington Metropolitan Area Transit Commission. The points raised by NAMBO in its first two arguments are identical to points raised by Public Service and the Commission and have been discussed above.

A third point, raised by NAMBO, relative to judicial review and findings of fact is different. NAMBO is correct that certain facts were stipulated and it correctly quoted portions of the Compact. However, the question here is not a review of a finding of fact but the determination of the authority of the Commission to regulate carriers in the nature of Public Service. This determination requires an interpretation of the Compact and is a subject of judicial review.

The weight to be given to a former decision of the Interstate Commerce Commission was fully discussed by the United States Court of Appeals for the Fourth Circuit, in Alexandria, Barcroft, & Washington Transit Company v. Washington Metropolitan Area Transit Commission, 323 F.2d 777, 780, (1963), noted in Petitioner's original brief on Pages 8, 9 and 19.

NAMBO's argument under its point IV relies upon an Interstate Commerce Commission decision, the weight of which is noted above.

With one exception all other arguments presented by

NAMBO have been previously dealt with herein. The one exception is designated as "practical difficulties" by NAMBO. Even assuming that such difficulties would arise, what connection could they possibly have relative to the interpretation of the Compact? The end result does not establish the formula, the formula produces the end result. If the results are other than pleasant, then we must attack the formula, not the results.

In summary your attention is directed to the unambiguous wording of Article XII, Section 1(a)(4), and the underlying importance of the language "regular route". If this language brings about an undesirable result then the Commission should appeal to Congress and request revision of the Compact. This Court cannot ignore the Compact, logic must stand aside and the law must take its course as set forth by the governing statutes. The authority of the Commission is set forth and the Commission must step forward and assume the responsibilities as long as they exist.

Respectfully submitted,

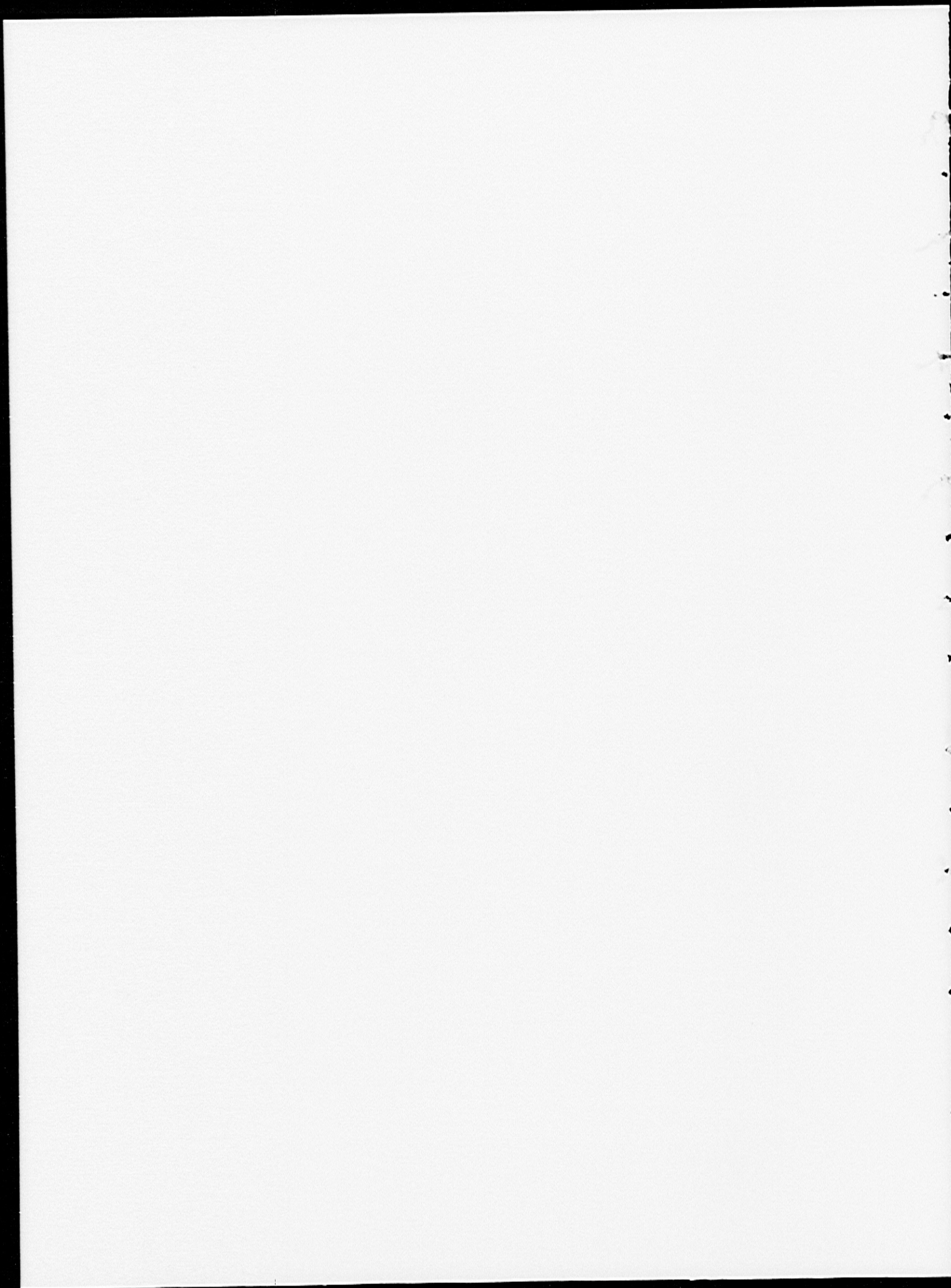
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Petitioner's Supplemental
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Appendix A - 1

BEFORE THE

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

In the Matter of

D. C. TRANSIT SYSTEM, INC.,
a corporation,

v.

PUBLIC SERVICE COORDINATED TRANSPORT,
a corporation

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Formal Complaint
No. 17

REPLY OF NATIONAL ASSOCIATION OF
MOTOR BUS OWNERS TO APPLICATION
FOR RECONSIDERATION

The National Association of Motor Bus Owners
(NAMEO) hereby opposes the application of D. C. Transit
System, Inc. (D. C. Transit) for reconsideration of Order
No. 897, showing the following:

1. Commission Order No. 897 was issued after full
briefing by the parties and oral argument. The Order is
a well-reasoned, thoroughly considered disposition of all
contentions of the parties. D. C. Transit simply
reiterates arguments it made previously to the Commission
and all were reviewed, analyzed and considered in the
Order. Nothing new is offered and no basis is shown for

reconsideration.

2. D. C. Transit continues to argue that the language of Article XII, Section 1(a) of the Compact reaches every kind of transportation within the Metropolitan District. This argument is contrary to the clear intent of Congress to limit the Compact to transportation performed solely within the District and to treat the District as a State, with this Commission having jurisdiction over "purely intrametropolitan district transportation," as shown more fully hereafter. The intent of Congress is further indicated by the exemption in Article XII, Section 1(a) (4) for regular route operations performed in part in the District and the provisions of Article XII, Section 20(a) (2) excepting "special and chartered party" authority issued by the Interstate Commerce Commission from the jurisdiction of this Commission.

Section 1(a) provides that -

"This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except . . ."

D. C. Transit erroneously construes the phrase "transportation . . . between any points in the Metropolitan District" to embrace any transportation which touches the District. This is plainly contrary to the intent of Congress. More

than that it is contrary to the meaning judicially ascribed to such words. In Golden Gate Scenic S.S. Lines, Inc. v. Public Utilities Commission, 19 Cal. Reprtr. 657, 659, 369 P.2d 257, 259 (1962), the California Supreme Court ruled that the phrase "between points in this State" did not cover a waterborne loop operation in San Francisco Bay. The Court concluded that the quoted phrase is not merely a reference to the territorial extent of the operation but is descriptive "of the kind or type of movement or carriage to which the statute applies." It added that:

"Points as used in Section 1007 is the equivalent of 'termini.' It thus follows that to meet the statutory limitation to 'transportation . . . between points' there must be two or more ends-of-the-line, stations, towns, or places between which the vessel operates [in the state]." 369 P.2d at 261, bracketed matter added.

Thus, the type of movement is crucial to a determination and if the transportation does not involve termini -- i.e., the origination or discharge of passengers in the District -- it is not "transportation . . . between points in the District." Here the transportation was a charter party which originated in New Jersey and was terminated there; did not involve the taking on or discharging of any passengers at terminals within the

District; and only involved the District to the extent that part of the total movement was performed there. This is not transportation between points in the District within the meaning of the language employed in the Compact.

3. D. C. Transit argues that the District can not be analogized to a State. The difficulty with this position is that it is directly contrary to express language of Congress. Thus, the House Judiciary Committee reported on this legislation that:

" . . . Jurisdiction of the Compact should extend only to transportation performed solely within the proposed metropolitan district." (H. Rept. 1621, 86th Cong., 2d Sess., p. 3, emphasis added.)

The Committee further said:

" . . . The effect . . . is to treat the metropolitan district as a State with the consequence that the Washington Metropolitan Area Transit Commission would have jurisdiction over purely intrametropolitan district transportation and the Interstate Commerce Commission would have jurisdiction over transportation crossing the metropolitan district boundaries." (H. Rept. 1621, 86th Cong., 2d Sess., p. 26, emphasis added.) ^{1/}

The District was intended by Congress to have

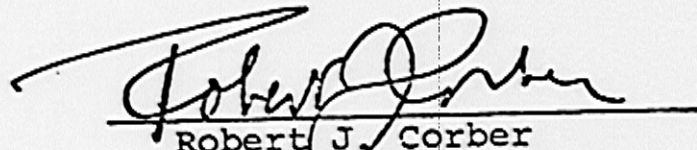
^{1/} See, also, Hearings Before Special Subcommittee of Committee on the Judiciary, U. S. Senate, H. J. Res. 402, 86th Cong., 2d Sess., p. 125.

the regulatory jurisdiction of a state. No state requires local certification for interstate charter movements. When the City of Chicago attempted to require certification for performance of transportation within the city as a part of an interstate movement the Supreme Court declared the action unlawful. City of Chicago v. Atchison, T. & S. F. Ry. Co., 357 U.S. 77, 88-89 (1958). There is no broader power here.

D. C. Transit is inconsistent with its argument that the Compact reaches all transportation within the District (except transportation expressly exempted) when it contends that a charter operation without sightseeing is not subject to this Commission's jurisdiction but a charter with sightseeing is jurisdictional (Application, pp. 9-10). No state makes such a distinction and none is applicable here. Certification for sightseeing on interstate charter trips is beyond the jurisdiction intended for the Metropolitan District.

WHEREFORE, NAMBO respectfully requests that the application of D. C. Transit for reconsideration of Order No. 897 be denied.

Respectfully submitted,



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Attorney for Intervenor

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Of Counsel.

January 31, 1968

The Honorable George A. Avery,
Chairman
Washington Metropolitan Area
Transit Commission
1815 North Fort Myer Drive
Arlington, Virginia 22209

Re: D. C. Transit System, Inc. v. Public
Service Coordinated Transport -
Formal Complaint No. 17

Dear Chairman Avery:

At the oral argument in the above-captioned proceeding, upon advice of operating personnel, I indicated, subject to check, that sightseeing operations in New York City could not be performed by an out-of-state carrier without certification by local authorities. I now find that New York City regulations pertain only to the licensing of vehicles, drivers, and guides employed in sightseeing operations and to the imposition of taxes on such operations.

Sincerely yours,

Manuel J. Davis

cc: Thomas J. McCluskey, Esquire
Robert J. Corber, Esquire

33-4

In The
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,904

D. C. TRANSIT SYSTEM, INC., a corporation
Petitioner

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
Respondent

and

PUBLIC SERVICE COORDINATED TRANSPORT,
Respondent-Intervenor

and

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,
Respondent-Intervenor

United States Court of Appeals
for the District of Columbia Circuit

STATUTES

FILED JUN 27 1969

Nathan J. Paulson
CLERK

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System, Inc.

INDEX TO STATUTES

Washington Metropolitan Area Transit

Regulation Compact, Public Law 86-794, 75 Stat.

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ARTICLE I

There is hereby created the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District, which shall embrace the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties and that portion of Loudoun County, Virginia, occupied by the Dulles International Airport and the counties of Montgomery and Prince Georges, in the State of Maryland and political subdivisions of the State of Maryland located within said counties, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties, cities and airport.

ARTICLE II

The signatories hereby create the "Washington Metropolitan Area Transit Commission", hereinafter called the Commission, which shall be an instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland, and shall have the powers and duties set forth in this compact and such additional powers and duties as may be conferred upon it by subsequent action of the signatories. The Commission shall have jurisdiction coextensive with the Metropolitan District for the regulation and improvement of transit and the alleviation

of traffic congestion within the Metropolitan District on a coordinated basis, without regard to political boundaries within the Metropolitan District, as set forth herein.

ARTICLE V

1. There is hereby created, in addition to the Commission, a Traffic and Highway Board, hereinafter referred to as Board. This Board shall be composed of the Chairman of the Commission created by Article II, who shall be chairman of this Board, and the heads of the traffic and highway departments of each of the signatories and of the counties and cities encompassed within the Metropolitan District, a representative of the National Capital Planning Commission, a representative of the National Capital Regional Planning Council, and a representative of each local and regional planning commission within the District. The representatives of the various planning commissions shall be designated by each such commission. The official in charge of the traffic and highway department of each of the signatories may appoint a member of his staff to serve in his stead with full voting powers.

2. The Board shall make recommendations to the Commission with respect to traffic engineering, including the selection and use of streets for transit routing, the requirements for transit service throughout the Metropolitan District, and related matters. The Board shall also consider problems referred to it by the Commission and shall continuously study means and methods of shortening transit travel time, formulate plans with respect thereto, and keep the Compact Commission

fully advised of its plans and conclusions.

3. The Board shall serve the Commission solely in an advisory capacity. The Commission shall not direct or compel the Board or its members to take any particular action with respect to effectuating changes in traffic engineering and related matters, but the members of the Board in their capacity as officials of local government agencies shall use their best efforts to effectuate the recommendations and objectives of the Commission.

4. The members of the Board shall serve with or without additional compensation, as determined by their respective signatories.

ARTICLE VII

Nothing herein shall be construed to amend, alter, or in any wise affect the power of the signatories and the political subdivisions thereof to levy and collect taxes on the property or income of any person or company subject to this Act or upon any material, equipment or supplies purchased by such person or companies or to levy, assess and collect franchise or other similar taxes, or fees for the licensing of vehicles and the operation thereof.

ARTICLE VIII

This compact shall be adopted by the signatories in the manner provided by law therefor. This compact shall become

effective ninety (90) days after its adoption by the signatories and consent thereto by the Congress of the United States, including the enactment by the Congress of such legislation, if any, as it may deem necessary to grant this Commission jurisdiction over transportation in the District of Columbia and between the signatories and over the persons engaged therein, to suspend the applicability of the Interstate Commerce Act, the laws of the District of Columbia, and any other laws of the United States, to the persons, companies and activities which are subject to this Act, to the extent that such laws are inconsistent with, or in duplication of, the jurisdiction of the Commission or any provision of this Act, or any rule, regulation or order lawfully prescribed or issued under this Act, and to make effective the enforcement and review provisions of this Act.

ARTICLE X

Each of the signatories pledges to each of the other signatory parties faithful cooperation in the solution and control of transit and traffic problems within the Metropolitan District and, in order to effect such purposes, agrees to enact any necessary legislation to achieve the objectives of the compact to the mutual benefit of the citizens living within said Metropolitan District and for the advancement of the interests of the signatories hereto.

ARTICLE XI

1. If any part or provision of this compact or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact or the application thereof to other persons or circumstances and the signatories hereby declare that they would have entered into this compact or the remainder thereof had the invalidity of such provision or application thereof been apparent.

2. In accordance with the ordinary rules for construction of interstate compacts, this compact shall be liberally construed to eliminate the evils described therein and to effectuate the purposes thereof.

ARTICLE XII

Transportation Covered

1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or

performing such transportation service, except -

- (1) transportation by water;
- (2) transportation by the Federal Government, the signatories hereto, or any political subdivision thereof;
- (3) transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;
- (4) transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission;
- (5) transportation performed by a common carrier railroad subject to Part I of the Interstate Commerce Act, as amended.

Certificates of Public Convenience and Necessity;
Routes and Services.

4. (a) No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

Complaints and Investigations by the Commission

13. (a) Any person may file with the Commission a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provision of this Act, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable grounds for an investigation, the Commission shall investigate the matters complained of. Whenever the Commission is of the opinion that

any complaint does not state facts which warrant action on its part, it may dismiss the complaint without hearing. At least ten (10) days before the date it sets a time and place for a hearing on a complaint, the Commission shall notify the person complained of that the complaint has been made.

(b) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of this Act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this Act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation. The Commission shall have the same power to proceed with any investigation instituted on its own motion as though it had been appealed to by complaint.

(c) If, after affording to interested persons reasonable opportunity for hearing, the Commission finds in any investigation instituted upon complaint or upon its own initiative, that any person has failed to comply with any provision of this Act or any requirement established pursuant thereto, the Commission shall issue an appropriate order to compel such person to comply therewith.

(d) For the purpose of any investigation or any other proceeding under this Act, any member of the Commission, or any

officer designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry.

Judicial Review

17. (a) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for the fourth circuit, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty (60) days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the

Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The court may affirm or set aside any order of the Commission, and state the reasons therefor, and such judgment shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in §§239 and 240 of the Judicial Code, as amended (U.S.C. Title 28, §§346 and 347).

Applicability of Other Laws

20. (a) Upon the date this Act becomes effective, the applicability of all laws of the signatories, relating to or affecting transportation subject to this Act and to persons engaged therein, and all rules, regulations and orders promulgated or issued thereunder, shall except to the extent in this Act specified, be suspended, except that -

(1) The laws of the signatories relating to inspection of equipment and facilities, wages and hours of employees, insurance or similar security requirements, school fares, and

free transportation for policemen and firemen shall remain in force and effect.

(2) Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act.

(b) In the event any provision or provisions of this Act exceed the limits imposed upon the legislature of any signatory by the Constitution of such signatory, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision or provisions upon the Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the signatory and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective. Such agency, however, in order to achieve the objective of this compact to effectuate the regulation of mass transit on a unified and coordinated basis throughout the Metropolitan District, shall refer to the Commission for its

recommendations all matters arising under this Title so reserved to such signatory and all matters exempted from this Title pursuant to the proviso clause of Section 1 (b) of this Title. The recommendations of the Commission with respect to such matters shall be advisory only.

